CORRECTED COPY

(3)

Supreme Court, U.S.
FILED
DEC 22 1994
OFFICE OF THE CLERK

No. 94-1100

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

LYNETTE ROGERS, *pro se*
Petitioner.

In Re ROGERS

PETITION FOR
EXTRAORDINARY WRIT

TO THE HONORABLE JUSTICES
OF THE SUPREME COURT

LYNETTE ROGERS, *pro se*
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

QUESTIONS PRESENTED

1. Should the writ of mandamus lie to District Court to vacate Judge J.P. Vukasin's orders and judgments which were executed under the following exceptional circumstances: usurpation of power, abuse of discretion, and by a false statement?

2. Did the State of California provide unequal opportunity for registered NURSES RECEIVING FEDERAL grants in a baccalaureate nursing education program at a state university?

3. If a defendant has conspired with officers of the court to impede the due course in the administration of justice, should the court first examine defendants' conduct before ruling on a delay in a long-standing civil rights case?

4. Was petitioner's discharge from federal service justified by the VA's adverse actions?

LIST OF PARTIES

Richard L. Roudebush
John D. Chase, M.D.
A.M. Gottlieb, M.D.
Franklin Johnson, M.D.
Richard I. Myers, M.D.
Robert C. Burr, M.D.
Richard T. Cullen
Helen F. Hennessey
Helen Johnson
Doris von Morpurgo
Junne Cramer
Esther McShan
Margaret Elliott
Angelina Frantz
Clara Cutler
Helen Stevens
Ms. DuFour

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED

LIST OF PARTIES

TABLE OF CONTENTS i

TABLE OF AUTHORITIES . . . . . ii-iii

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 8

DISCUSSION 16

EXCEPTIONAL CIRCUMSTANCES 17
THAT PREVENTED APPELLANT FROM
APPEALING THE DECISION OF JUDGE
CECIL POOLE IN JANUARY 16, 1977

REASONS FOR SEEKING RELIEF 22
IN 1992

CONCLUSION 30

APPENDIX/INDEX (Bound separately)

TABLE OF AUTHORITIES

CASES	Page(s)
American Science & Engineering 571 F.2d. 58 (1978)	22
Bailey v. Glover 88 U.S. 22 L.Ed. 636	23
Banker's Life & Casualty Co., 74 S.Ct. 145, 149 (1953)	10
Bradley v. Fisher, 13 Wall 80 S.Ct. 646, 648 (1872)	16
Buhl v. Jeffies,	11
Celotex Corp. v. Catrett, 106 S.Ct. 2548 (1986)	27
De Beers Consol. Mines v. United States, 65 S.Ct. 1130	9
ex parte Fahey, 67 S.Ct. 1558, 1559, (1947)	10
Gradsky v. United States, 376 F.2d. 993-996 (5th Cir.)	30
Greater boston Television Corporation v. F.C.C., 463 F.2d. 268, 278 (1970)	16
Hazel Atlas v. Hartford, 322 U.S. 238 (1944)	26
In Re Potts, 17 S.Ct. 520 (166 U.S. 263)	9
Kletschka v. Driver, 411 F.2d. 436 (C.A.2. 1969)	29
Liljeberg v. Health Services12 Acquisition Corp., 108 S.Ct. 2194, 2195 (1988)	
Los Angeles Brush Mfg. Corporation v. James, 478 S.Ct. 286, 288 (1927)	12

CASES (con't) Page(s)

Norlander v. Schlek, ... 28
345 F. Supp. 595 (1972)

Pinkerton v. United States, ... 30
328 U.S. 640; 66 S.Ct.
1130 90 L.Ed. 1487

Roche v. Evaporated Mils Ass'n, ... 10
63 S.Ct. 938, 941 (1943)

Rogers v. United States Dept.of Labor, 28
607 F. Supp. 692 (D.C. Cal. 1985)

Rogers v. U.S., ... 28
15 Ct. Cl. 692 (1988)

SCA Service Inc. v. Morgan, ... 12
577 F.2d. 110 (7th Cir.)

Shelley v. Kramer, ... 28
68 S.Ct. 836 (1948)

Smith v. Cremens, ... 30
308 F.2d. 187, 190 (9th Cir 1963)

Stewart v. Price, ... 26
486 F.2d. 1031 (9th Cir. 1973)

Sublette v. Tinney, ... 23
9 Cal. 423 (1858)

Sullivan v. U.S., ... 5
428 F.Supp. (U.S.D.C. Wisc, 1971)

Turner v. Fouche, ... 29
90 S.Ct. 532, 541 (1970)

United States Alkali Export
Ass'n v. United States, ... 9
65 S.Ct. 1120, 1124, 1934 (1965)

Verdon Consolidated Rail Corp., ... 27
828 F. Supp. 1129, 1131 (S.D.N.Y 1982)

Will v. United States, ... 13
88 S.Ct. 269 (1967)

Wilson v. Garcia, ... 30
105 S.Ct. 1938, 1949 (1985)

CODES — Page(s)

5 U.S.C.A.

§5596 2

28 U.S.C.A.

§144 16
§377 9
§455(a) 12
§1331 2,3,8,11
§1343 2,8,11,22
§1343(a)(1)(2)(3) 2
§1651(a) 3
§1661(a) 3,9
§2106 11
§2154 9

38 U.S.C.A.

(Chap. 73 and 74) 7

42 U.S.C.A.

§§1981, 1983, 1985(1)(2)(3) . 2
§ 1986, 1988 2

F.R.A.P.

Rule 27.3 14
Rule 27(c) 14
Rule 59(e) 2,11
Rule 60(b)(3) 6,21

C.F.R.

20 CFR Ch. 1 §10.403 26

LOCAL RULES

205-3 13
205-4 8

S.Ct. RULES

Rule 20 3
Rule 22 8

CONST. AMEND.

First Amend. 3
Fourth Amend. 3
Fifth Amend. 3
Ninth Amend. 3
Fourtheenth Amend. . . . 3,28

California Constitution

Art. 1 §1 2

C.C.C.
§51 . . . . . .
§338(1-4) . . . . . .

Public Law
102-40 7

DM&S REULATIONS
MP-5, Part II, ... 25
Ch. 6.10(c)
MP-5, Part II, Ch. 6,
6.08 18,19
MP-5, Part II, Ch.8 18
Sect. A. (Disciplinary
Actions, Grievances
and Hearings
MP-5, Part II, Ch. 8 21
Sect. C

ACTS
CIVIL RIGHTS ACT . . . . . .
THE ALL WRITS ACT OF 1948 . . 9
FEDERAL EMPLOYEES COMPEN-
SATION ACT (28 U.S.C. §8101
et seq.
THE BACK PAY ACT OF 1966 . . . .
THE DEPARTMENT OF . . . . . .
VETERANS AFFAIRS
HEALTH CARE PERSONNEL ACT . . .
ADMINISTRATIVE PROCEDURE . . . .
ACT
THE PRIVACY ACT OF 1974 . . 13

BILLS
S.2908 20
H.R. 4537 29
H.R. 4838 29

INDEX/APPENDIX

A-1	JUDGMENT, U.S. Court of Appeals for the Ninth Circuit (hereinafter USCA (9th cir.)) in No. 94-16253 CT/AGf: CV-73-00739-SBA filed Sep 27 1994
A-2	JUDGMENT, U.S.C.A. (9th Cir.) in No. 92-16038 CT/AG: CV-73-00739-JPV filed Nov. 28, 1973.
A-3	ORDER, U.S.C.A. (9th Cir.) in Nos. 92-16938, 93-15383 filed October 13, 1993.
A-4	ORDER, U.S.C.A. (9th Cir.) in No. 94-16253 filed August 26, 1994.
B-1(1&2)	ORDER, United States District Court for the Northern District of California (hereinafter U.S.D.C.(N.D. Cal)) in No. 73-0739-SBA, filed June 21, 1994
B-2	ORDER, in No. C-73-0739-SBA filed June 22, 1994, in U.S.D.C. (N.D. Cal).
C-1(1-6)	ORDER in Nos. C-73-0739-JPV; C-83-0719-JPV; C-84-1519-JPV filed September 8, 1992 in U.S.D.C.(N.D. Cal)
C-2(1-6)	ORDER, in Nos. C-73-0739-JPV and related cases C-83-0719-JPV filed October 20, 1992 in U.S.D.C. (N.D. Cal).
C-3	ORDER C-83-20374 WAI, 12-17-92
D-1	CIVIL RIGHTS LAWS (Excerpts)
D-2	Public Law 89-380; THE BACK PAY ACT.

Exhibit(s):

D-3	Correction of Unjustified Personnel Actions in Federal Service (Excerpts).
D-4	Notice of Appeal in No. C-73-0739-JPV; C-83-0719-JPV; C-84-1519-JPV filed November 10, 1992.
D-5	Motion to Alter Judgment Under F.R.C.P. Rule 59(e) filed September 17, 1992 in U.S.D.C. (N.D. Cal).
E-1	Affidavit Supporting Motion for Preliminary Injunction in No. C-73-0739 CBR, August 7, 1973.
E-2	Letter from Asst. U.S. Attorney Paul Fitzpatrick to Joseph Remcho, counsel for plaintiff dated October 18, 1976.
E-3	Letter from defendants to Chief Attorney, VA, May 15, 1973.
E-4	Letter to Gerald T. Cullen from Lynette Rogers, september 20, 1979.
E-5	Notification from Clerk's office in U.S.C.A. (9th Cir.) No. 94-16253, to Lynette Rogers September 12, 1994.
E-6	Points and Authorities in Support of Plaintiff's Motion for Intradistrict Change of Venue, November 8, 1983.
E-7	Declaration of Lynette Rogers in Support of Motion for Intradistrict Change of venue, November 8, 1983.

Exhibit(s):

E-8	Motion for Disqualification of Assigned Judge, the Honorable J.P. Vukasin under U.S.C. §144, filed July 16, 1993 (with attachments).
E-9	TABLE OF CONTENTS from Appellant's Opening Brief filed March 15, 1993 in U.S.C.A. (9th Cir.)
E-10	Civil DOCKET CONTINUATION SHEET, C-83-0719-JPV
E-11	Civil DOCKET CONTINUATION SHEET, C-a83-20374 WAI; C-84-1519-JPV
E-12	JUDGMENT in C-83-20374 WAI filed April 19, 1984.
E-13	Petition for Writ of Mandate (sic) under F.R.A.P. 27(c), February 5, 1992.
E-14	NOTICE OF HEARING, filed October 9, 1992.
E-15	Statement from Interim Health Care, November 14, 1994.
E-16	APPELLEES' MOTION FOR SUMMARY AFFIRMANCE, August 25, 1993.
F-1	Letter to William Hicks from Lynette Rogers, May 11, 1978.
F-2	Letter from William Hicks to Lynette Rogers, May 30, 1978.
F-3	Letter to Bureau of Personnel Investigations from L. Rogers, February 8, 1979.

Exhibit(s):

F-4	Letter to Office of Personnel Management, May 9, 1979 from counsel L.H. Cordell
F-5	Letter to Mrs. Rogers from Office of Personnel Management dated May 22, 1979.
G-1	Memorandum to Chief, Nursing Service from E. Burian, M.D.
G-2	Letter of Proposed Discharge, February 6, 1975
G-3	POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT January 28, 1977.
G-4	Affidavit of Lynette Rogers dated, September 9, 1994
G-5	Federal Times, April 17, 1974, "Ouster of VA Chief Urged."
G-6	Declaration of Lynette Rogers seeking counsel, November 10, 1992.
G-7	Declaration of defendant Paul Duggan, February 13, 1984.
G-8	TABLE OF AUTHORITIES from Extended Brief submitted on April 17, 1985 in Civ. # C-84-1519-JPV.
G-9	38 U.S.C. §4110 Disciplinary Boards.
G-10	TABLE OF CONTENTS IN c-73-0739-JPV, filed July 16, 1992. (Motion No. 1)

Exhibit(s):

G-11	TABLE OF CONTENTS in C-84-1519-JPV, filed July 16, 1992. (Motion No. 3).
G-12	TABLE OF AUTHORITIES from extended brief submitted on April 17, 1985 in Civ. No. C-84-1519-JPV
H-1	Affidavit of Lynette Rogers dated September 9, 1994
H-2	Memorandum to Lynette Rogers, R.N., from Clinical Coordinator, 1/10/73.
H-3	Memorandum to Lynette Rogers, R.N., from Clinical Coordinator, June 29, 1973.
H-4	Memorandum to Mrs. J. Cramer, Coordinator, from L. Rogers, R.N., June 29, 1973.
H-5	Letter to Dr. A.M. Gottlieb, Hospital Director, from F. Waltjen for petitioner, October 10, 1972.
H-6	Memorandum to L. Rogers, R.N., from J. Cramer, R.N., October 26, 1973
H-7	Memorandum to L. Rogers, R.N., from L. Rogers, October 29, 1974.
H-8	Letter to counsel David C. Weinberg from Franklin Johnson, M.D.
H-9	Affidavit of E. McShan, R.N., filed in U.S.D.C., San Francisco, August 27, 1973

Exhibit(s):

H-10	Declaration of Lynette Rogers, dated July 11, 1992, with attachments "c" and "d" only.
I-1	Letter to Lynette Rogers from Robert P. Duggan, OWCP, DOL, April 6, 1977.
I-2	Letter to Lynette Rogers from Richard I. Myers, M.D., May 23, 1977.
I-3	Report of Medical Examination 4/11/68.
I-4	Report of Medical Examination 7/6/71
I-5	Affidavit of E. Piggins, October 21, 1991
I-6	Letter from counsel to defendant, Mr. Wax.
I-7	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CERTIFICATE OF COUNSEL RESPECTING STATUS OF ADMINISTRATIVE HEARING. C-73-0739 CFP
I-8	Letter to Dr. R. Burr from Lynette Rogers, June 26, 1991
I-9	Letter to Lynette Rogers from Dr. R. Burr, June 27, 1991.
I-10	Declaration of Lynette Rogers, July 11, 1992.
I-11	Affidavit of Lynette Rogers, September, 1994.

Petitioner *pro se* herein files this petition for extraordinary writs of error and mandamus to the United States District Court for the Northern District of California (hereinafter USDC) to enter orders or judgment consistent with this Court's findings and opinion after vacating the orders of Judge J.P. Vukasin, Jr., because of exceptional circumstances. Due to the voluminous record, the exhibits to this petition, In Re Rogers, are bound separately and submitted here.

OPINIONS AND JUDGMENTS BELOW

The last filed Judgment in No. 94-16253, on September 27, 1994 is submitted here as reproduced in Appendix A. The previous Judgment in No. 92-16938 is submitted here also as reproduced in Appendix A-2. Both judgments are submitted here since the ORDER of the Ninth Circuit Court of Appeals includes both docket numbers and since this Order bars any motion for clarification of this ORDER. She includes it here as such and reproduced in Appendix A-3. The last judgment, filed on September 27, 1994, was on Order No. 94-16253 filed August 26, 1994 and is reproduced in Appendix A-4. The appeal to the Ninth Circuit Court was on the Order of the Honorable Judge Saundra B. Armstrong filed June 21, 1994 in No. C 73-0739 and is reproduced in Appendix B-1. A subsequent Order in the same case denying Summary Judgment filed June 22, 1994 is reproduced in Appendix B-2. The above judicial actions are the result of the Orders of Judge J.P. Vukasin and are reproduced in Appendix C-1. The ORDER DENYING INTRADISTRICT TRANSFER AND MOTION TO AMEND JUDGMENT, filed October 20, 1992, is reproduced in Appendix C-2. No formal judgment has been entered by the District Court in her three motions: C-73-0739-CFP, C-83-0719-JPV, and C-83-20374 WAI

filed on July 16, 1992 for Relief from Judgment and Order under F.R.C.P. Rule 60(b)(4).

JURISDICTION

The jurisdiction pled in the Federal District Court under 28 U.S.C.A. §§1343, 1331, 28 U.A.C.A. § 1343(a)(1) (2)(3); 42 U.S.C.A. §§ 1981, 1983, 1985(1)(2)(3), 1986, 1988; 5 U.S.C.A. §5596; 38 U.S.C.A. applicable sections of Civil Rights Laws are submitted here in Appendix D-1. The Back Pay Act of 1966 in [D-2], and Correction of Unjustified Personnel Actions in Federal Service [D-3] (inadvertently omitted from Appendix) is attached at end of text for the court's information. California's Constitution Art.1 §1, and California Civil Rights Act, CCC §51 [see D-1(a)]. Appellant submitted her appeal on November 10, 1992 [D-4] after filing a MOTION TO ALTER JUDGMENT UNDER F.R.C.P. RULE 59(e) to entry of order of Judge J.P. Vukasin on September 8, 1992 [see C-1][D-5]. However in the Ninth Circuit Court's CIVIL APPEALS DOCKETING STATEMENT under the ISSUES PROPOSED TO BE RAISED ON APPEAL, petitioner responded that: "The primary issue with respect to the three cases is that the Honorable J.P. Vukasin, Jr., in C-73-0739-JPV, C-83-0719-JPV, C-83-1519-JPV abused his discretion by failing to disqualify himself after plaintiff-appellant questioned, reasonable and factually, his sense of impartiality in which instances of prejudice to plaintiff would not only undermine her confidence, but also the public's, in the judicial process and injustice in civil rights cases." Therefore, petitioner's appeal to the Ninth Circuit focused on Order #3 filed September 8, 1992 by Judge Vukasin which states: "Plaintiff's motion for disqualification of Judge Vukasin is denied." [See C-1].

Therefore, her appeal was interlocutory. This petition is filed within 90 days of the Judgment of the Court of Appeals below Sup.Ct.R. 20 under 28 U.S.C. §1651(a) and 28 U.S.C. §1331.

CONSTITUTIONAL PROVISIONS

1. The Fourteenth Amendment to the United States Constitution which provides for the due process and equal protection clause.

2. The First Amendment to the Constitution prohibiting the free exercise of speech and to petition the government for redress of grievances.

3. The Fourth Amendment to the Constitution protecting the rights of persons against unreasonable searches.

4. The Fifth Amendment to the Constitution protecting the deprivation of life, liberty, or property without due process of law.

5. The Ninth Amendment to the Constitution to protect all other unenumerated rights.

STATEMENT OF THE CASE

Petitioner, LYNETTE ROGERS, *pro se* is a naturalized citizen and a registered nurse licensed by the State of California. She entered Federal Service on April 15, 1968 in the Veterans' Affairs Hospital, Palo Alto, California (hereinafter VAPA). She was discharged, allegedly for cause, on November 8, 1975. She affirms, and her records show by relevant evidence, that her discharge resulted from a denial to be fairly considered for employment in federal Service by state action, under color of law. She has been deprived of rights, privileges and immunities under the Constitution by an invidious class-based discriminatory animus by persons acting under color of law in the Nursing Department of San Jose State

University (hereinafter SJSU), federal agents of VAPA and private parties in Kaiser Hospital, San Francisco, and, by discovery of a new party, a fee-based psychiatrist of Sunnyvale, California. These defendants conspired, with officers of the Court, with intent to deprive her of equal protection, privileges and immunities under the laws. She filed her original action on May 3, 1973, by seeking an injunction against defendants from taking adverse employment action against her under an unconstitutional regulation: The Proficiency Rating System of DM&S (Department of Medicine and Surgery) which had no objective standards on a right to file a grievance. The VA conceded such facts as published in their Program Guide For Nursing Service DM&S, G-5, M-2, Part V, March 1, 1960. To preclude irreparable injury, petitioner filed an affidavit on August 7, 1973, in support of a Preliminary Injunction [E-1]. Petitioner filed her original complaint against these persons in their individual capacities. Defendant Government insisted that the federal defendants be sued in their official capacities as a prerequisite to the filing of an amended complaint by petitioner [E-2] whereupon the prior signed agreement dated May 15, 1973, of defendants' request to be represented by the United States Attorney expanded the conspiracy by infiltrating the judicial process. [E-3]. Defendants intent to discharge her from the service by taking unjustified personnel actions against her originated by their maintaining and concealing two references from her, at both the administrative and judicial levels. Congress, by statute under 5 U.S.C.A. 5596, created a substantive right under this Act from unjustified personnel actions which are taken with impropriety. Therefore, a waiver

of sovereign immunity is implied in the Act. Petitioner, as the record will show, has been denied all access to this information both at the administrative and judicial process. Defendants have never claimed privilege to this information. Therefore, she has been denied due process under the Fourteenth Amendment. She was discharged from Federal Service on November 8, 1975 and she appealed this discharge through the administrative process. A judicial review of her discharge took place on February 11, 1977 and the court upheld the agency's discharge on the basis of a physician's order. No appeal was taken, which petitioner later addresses under exceptional circumstances. Since petitioner sustained personal injuries by a loss of liberty interest and burdened by two badges of infamy she has, by due diligence, pursued all avenues for relief since 1977. She was trying to obtain full-time employment. She filed a claim under the Office of Workers' Compensation Program (OWCP) of the department of Labor (DOL) on May 10, 1974 after the VA placed her in a clerical position and assigned her to a small room for approximately 106 working days, segregated from her peers with nothing to do. She got no treatment nor compensation for her hypertensive crisis and acute anxiety by either the VA or DOL. The Federal Employees Compensation Act (FECA). 28 U.S.C.A. §8101 et seq. Although FECA has no jurisdiction in case of mental distress, loss of employment and discrimination [see Sullivan v. U.S.D.C. Wisc., 428 F.Supp. 79 (1977), she continued to pursue this avenue of relief for the clearance of her records. [E-4]. Her efforts were thwarted because the OWCP in conspiracy with the VA opposed her efforts, and as the record

shows, persons within the OWCP engaged in unlawful overt acts to add further to petitioner's injuries. In 1982-1983, petitioner undertook in-depth research in the Congressional Records on the basis of previous hearsay evidence with respect to the lawful Composition of VA Disciplinary Boards. She discovered relevant evidence that defendants obtained summary judgment in their favor on February 11, 1977, by making a false representation of a matter of fact by positively affirming that the VA Administrator had the authority to change the chairmanship of disciplinary boards, and also, that the regulation had been changed to this effect. This pleading was before a newly appointed Judge, Cecil F. Poole. Petitioner filed an independent action under F.R.C.P., Rule 60(b)(3) in USDC, San Jose (S.J.). The action was filed under Civ. No. C-83-20374 WAI. While a decision was pending in this action before the Honorable William A. Ingram in S.J., a newly appointed judge, John P. Vukasin, Jr., who was presiding over her Privacy act case against DOL which he acquired through a reassignment from a previous experienced judge, allegedly obtained permission from Chief Judge Robert Peckham to have her case transferred from the S.J. venue district to venue of San Francisco under a related case theory in C-83-0719 JPV. Judge Ingram later denied petitioner's claim stating that she needed to show an unconscionable scheme. One year later, petitioner filed her motion, as ordered by Chief Judge Peckham of the Reassignment Committee and submitted it to Judge J.P. Vukasin in C-83-1519-JPV showing an unconscionable scheme. These actions are discussed with particularity in the following section, but are presented here as reference to a chronological period only.

On June 20, 1985, Judge Vukasin denied petitioner's motion for relief claiming it was meritless. In November 1987, petitioner filed a claim in the Claims Court on an alleged breach of oral contract. This contract was conditional in that petitioner specifically informed the VA interviewer, an Assistant Chief Nurse, that she was fired from Kaiser Hospital because of her student experiences in SJSU. This experience resulted from state action, under color of law. The Claims Court held that no such contractual right exists for federal employees and dismissed petitioner's claim. An appeal to the United States Court of Appeals for the Federal District followed. On June 16, 1989, the Court ruled in favor of defendant in an unpublished opinion. She returned to the Claims Court under Rule F.R.C.P. 60(b) because she further discovered on April 15, 1989, that the unsatisfactory Proficiency Report given her by her superior with reasons for her discharge, was not authored by her superior, the alleged rater, who stated otherwise under penalty of perjury in 1973, to the Court. The Claims Court entered judgment on November 16, 1990 in favor of defendant. In 1991, petitioner discovered relevant evidence from the State of California that the physician, on whose order the court sustained her discharge in 1977, was unlicensed to practice in the state. She made this discovery this one week prior to passage of Public Law 102-40 on May 7, 1991, The Department of Veterans Affairs Health Care Personnel Act of 1991, in which the VA, repealed an entire chapter of 38 U.S.C.A., i.e. Chapter 73, and replaced it with Chapter 74 of 38 U.S.C.A. Therefore, in presenting her claim for equitable relief on July 16, 1992 for reinstatement in the VA

under the Administrative Procedure Act (APA), she amended her pleadings under a relation back theory to her original action she filed under 28 U.S.C.A. §1343, 1331. This amendment is contained in her three motions filed in C-73-0739-CFP, C-83-0719-JPV (both in S.F.), and C-73-20374 WAI in S.J. Judge Vukasin obtained all the motions in his court and denied her relief on September 8, 1992. [See prev. C-1]. After petitioner received the first Order from the Ninth Circuit Appellate Court, she petitioned the next assigned judge, the Honorable Marilyn Hall Patel, under S.Ct.Rule 22 to render judgment on her three motions since she was without clarification by the Ninth Circuit's Order. [See prev. A-1]. Her case was reassigned to Judge S.B. Armstrong who entered the court's order as stated previously. [See prev. B-1&2]. She again appealed this denial and the court issued its second mandate citing a precedent case whereby an appeal to vacate the mandate is permitted. Petitioner filed a motion in the Appellate Court to vacate the mandate. The court returned her Motion holding that no motions are to be accepted from her. [E-5]. Hence petitioner invokes the ingerent powers of the Supreme Court for the following reasons.

REASONS FOR GRANTING THE WRIT

There are extraordinary reasons that petitioner presents to this Court for granting extraordinary writs.

1) The Ninth Circuit Court's mandate violates petitioner's right to due process of law, and freedom to exercise her rights to free speech by denying her these rights to seek clarification of its mandates. The Ninth Circuit's original mandate [A-1] was also upheld by its second mandate which

recites the same prohibitions. [A-2]. This bar to clarification is contrary to this Court's precedent case of In Re Potts, 17 S.Ct. 520 (166 U.S. 263). Here the court held, that even though the circuit court is bound by the decree: "That the circuit court may consider and decide any matters left open by the mandate of this court, and its decision of such matters can be reviewed by a new appeal only." In petitioner's case, the appellate court refused to review any matters left open by its mandate. However, the Ninth Circuit has placed an absolute bar as to inquiry of its mandate. Therefore, she is denied due process. Furthermore, this court has held that: "If the circuit court mistakes or misconstrues the decrees of this court, and does not give full effect to the mandate, its actions may be controlled either upon a new appeal, if involving a sufficient amount, or by a writ of mandamus to execute the mandate of this court." Petitioner therefore alleges that the circuit court did not give full effect to the mandate, and therefore, the Supreme Court may review the order of the USDC by a writ of certiorari under 28 U.S.C.A § 1254 and examine the record for "writ of mandamus." In United States Alkali Export Ass'n v. United States, 65 S.Ct. 1120, 1124 1934 (1945) this court has the authority to review judgments and orders of the district court by writs of certiorari and mandamus. Jud. Code §262, 28 U.S.C. §377. And in DeBeers Consol. Mines v. United States, 65 S.Ct. 1130, this Court, by its appellate jurisdiction, can review situations where Congress has neither legislated by statute nor provided for review of interlocutory orders. The All Writs Act of 1948 consolidates these prior provisions for review in 28 U.S.C.A. §1661(a). The orders in question are those of Judge Vukasin which

are interlocutory as discussed below. Therefore, the Court will find, on review of these orders, that Petitioner's invocation is proper for a remedy of mandamus because of the extraordinary circumstances in her case. See Bankers Life & Casualty Co., 74 S.Ct. 145, 149 (1953), quoting ex parte Fahey, (1947), 67 S.Ct 1558, 1559, in which the court held: "As extraordinary remedies, they are reserved for really extraordinary causes." Petitioner's conduct has been consistent with her beliefs and actions and compatible with the citizens of the State of California's concerns for the delivery of safe and responsible health care, and for the public's belief in the trustworthiness of its institutions. She believed, and was assured by positive verbal and written assertions, that she would have support for providing changes in the delivery of health care to veterans by the VA. She was therefore meeting the terms of the Nurse Traineeship Program and as a former recipient of federal funds. [Z (attach.30,31)]. In order to maintain this stead-fastness of purpose, and be given equal protection, privileges and immunities under the law, petitioner has diligently pursued her rights since 1973 through the judicial and administrative process. She has no other means to obtain the relief she desires. See Roche v. Evaporated Milk Ass'n, 63 S.Ct., 938,941 (1943).

2. The second reason for invoking the writ is that the Ninth Circuit Court, by affirming the Orders of the District Court, leaves unaddressed the Orders of Judge Vukasin without an entry of judgment. Therefore, she invokes the supervisory powers of this Court to determine, by the following exceptional circumstances, that the warrant of a writ to the District Court with respect to the Orders of Judge Vukasin is justified

since they were effected by manifest injustice over a protracted period of ten years.

The Supreme Court has the power to review and vacate these orders under 28 U.S.C.A. §2106. Therefore, she presents three exceptional reasons which qualify for review. Judge Vukasin's Orders, [see C-1 & 2] result from three motions which were filed on July 16, 1992. Only Motion No. 2, C-83-20374 WAI is submitted here in the Addendum in its entirety and designated with applicable exhibits under the letter "Z". The three reasons Petitioner cites are as follows: 1) abuse of discretion, 2) usurpation of power, and 3) making a false statement in his Order. Petitioner also presents two previous Motions by which she requested a change of venue from the district of San Francisco, to San Jose, to prevent manifest injustice, but Judge Vukasin denied every petition. [E-6; E-7]. By these denials and proof of the exceptional circumstances following, it can be inferred that Judge Vukasin's intent was to continue to inflict manifest injustice upon Petitioner. When Petitioner first filed her civil rights jurisdiction claim, she did so under general venue requirements which is permissible under 28 U.S.C.A. §§ 1343, 1331. See Buhl v. Jeffies, 435 F. Supp. 1149, 1150 (1977). In her final request by MOTION TO ALTER JUDGMENT UNDER F.R.C.P. Rule 59(e) filed September 11, 1992, she again petitions the Court to transfer her case to the San Jose district in the interests of justice under Local Rule 205-4. [See D-5]. This was also denied by Judge Vukasin in his Order on October 20, 1992. [See C-2]. Petitioner therefore presents the following facts which qualify as exceptional reasons to vacate the orders and judgements of Judge Vukasin.

ABUSE OF DISCRETION

1. Judge Vukasin abused his discretion by failing to recuse himself when Petitioner raised the question of his impartiality in a Motion filed July 16, 1992, calling for his disqualification. [E-8]. Mandamus does lie when this discretion is abused. See Los Angeles Brush Mfg. Corporation v. James, 47 S.Ct., 286, 288 (1927). And in SCA Services Inc. v. Morgan, 557 F. 2d, 110 (7th Cir. 1977) the Court identified a specific instance that qualifies as an abuse of discretion which is a failure of respondent to recuse himself. Because of the mandatory nature of the statute, a failure to recuse warrants mandamus relief. In Liljeberg v. Health Services Acquisition Corp., 108 S.Ct. 2194, 2195 (1988), the Court stated that the judge's refusal to recuse himself invites a risk of injustice to Petitioner and undermines the confidence of the public in the judicial process. 28 U.S.C. §§455(a) calls for disqualification in any proceeding where the impartiality of the judge may be reasonable questioned. Judge Vukasin refused to disqualify himself. [See C-2 of Order filed September 8, 1992]. A copy of the TABLE OF CONTENTS to the Ninth Circuit Appellate Court [E-9] asking for his disqualification was the only order of denial among the six listed which Petitioner appealed relief from [see prev. C-2] on March 15, 1993. Therefore, her appeal was on an interlocutory Order.

USURPATION OF POWER

2. In another exceptional reason showing circumstances that justifies the extraordinary remedy of mandamus is when Judge Vukasin obtained her case against the Veterans Administration (VA) by a usurpation

of power. See Will v. United States, 88 S.Ct. 269 (1967). This usurpation of power occurred when Judge Vukasin granted defendants' Motion for Summary Judgment in C-83-0719 JPV. Petitioner was claiming relief under the Privacy Act of 1974. On January 17, 1984, Judge Vukasin granted defendants' motion for summary judgment [see E-8, attach. 4] and Petitioners case was again promptly dismissed. In order to bring her case against the VA in C-83-20374 WAI before Judge Vukasin as a related case to C-83-0719-JPV, defendants obtained a Related Case Order which was signed on March 26, 1984 by Judge Vukasin. [E-8, attach. 2]. The Chief Judge, R. Peckham, signed the order for the Reassignment Committee on March 27, 1984. [E-8, attach 3] However between January 17, 1984, when Judge Vukasin granted defendants summary judgment in C-84-0719, and March 27, 1984, the date he signed the Reassignment Order, Judge Vukasin had no jurisdiction over petitioner as a party because of his earlier dismissal of her case (69) days previously. Judge Vukasin failed to abide by the Local Rules of the Court; specifically, L.R. 202-2(c) by denying her due process to be heard when she filed a counterstatement opposing notice of related case on March 14, 1984. Under para(c) the last statement says: "The court will then determine whether reassignment should be made." Judge Vukasin took no notice of petitioner's pleadings opposing the reassignment of her case and she was never given the opportunity to be heard. In her Motion for Disqualification of Assigned Judge, the Honorable John P. Vukasin, Jr., under 28 U.S.C. § 144 and Local Rule 205-3 Chief Judge R. Peckham allegedly signed the Order to reassign her case even though she filed her opposition. [E-8]. Therefore, his Order dated October October 20, 1992 in

which he states that plaintiff failed to avail herself of the opportunity to be heard is not only inappropriate since the docket sheet in C 83-0719 JPV shows that petitioner filed a motion for intradistrict change of venue [E-10, see entry Nov. 8, 83, NR 18] in which she requested a Hearing, but nine months later, on August 25 [see NR 18], Judge Vukasin declared petitioner's request for a change of venue moot. This statement is now also false with respect to his final order dated October 20, 1982 [see C-2] since petitioner had previously stated in her Motion to Alter Judgment, filed September 18, 1992, that she received Judge Vukasin's order of denial filed October 20, 1992 before receiving notice that her case was reassigned to him adding: "Therefore, plaintiff was denied requesting a hearing on her motion." [See prev. D-5]. In Judge Vukasin's Order filed October 20, 1992, he also states that the transferor court does not retain jurisdiction in any part of the proceeding [see C-2]. But, as the docket sheets show [E-11], Judge W.A. Ingram had no knowledge that petitioner's case was "case-napped" from his venue since, contrary to Chief Judge R. Peckham's Reassignment Order dated March 30, 1984 [see E-8(3)] that all matters presently scheduled for hearing should be vacated and should be renoticed to the reassigned judge. Nevertheless, they continued until April 19, 1984, when Judge Ingram entered Judgment. [E-12]. Moreover, not only was petitioner's case on the calendar in two different venues, S.F. and S.J., but the same case had two different numbers, but shared the same docket sheets. Furthermore, by changing the case number from C-83-20374-WAI to C-84-1519-JPV, Judge Vukasin foreclosed her right to appeal Judge Ingram's Judgment on April 19, 1984.

3. FALSE STATEMENT

Petitioner first presented these inaccuracies in the docket sheets to the Ninth Circuit Court of Appeals and petitioned the court for relief by a Writ of Mandate (sic) under F.R.A.P. 27(c) by an Emergency Motion under Circuit Rule 27.3 [E-13]. The purpose of this petition was for the Appellate Court to compel the lower court to amend its docket sheets since they contained misrepresented facts and omissions. The clerk denied her petition. [see E-13("B")]. Petitioner claimed that an entry on the docket sheet gave a false impression to the appell-ate court that she had a hearing before Judge Vukasin because the entry in the docket sheet states that one was scheduled for 11/12/72. Petitioner did request a hearing by Notice to all parties for November 12, 1992. [E-14].

Judge Vukasin also stated in his Order of September 8, 1992 that petitioner had an opportunity to be heard. [See C-1]. This statement is false for the following reasons:

(1) On November 10, 1992, petitioner filed her first Notice of Appeal (as amended February 5, 1992 to include "the whole thereof"). [See D-4]. Therefore, her previous Notice of Hearing filed Oct. 9, 1992, became moot by Judge Vukasin's Order of Denial filed September 8, 1992. (2) On November 12, 1992, petitioner worked as stated by her temporary nursing agency, Interim Health Care, in a statement dated November 17, 1994. [E-15]. Therefore, it would not be feasible for her to travel, by rail and bus, a distance of approximately 45 miles each way, appear at a Hearing at 10:00a.m. and return home in time to report to work before 3:00p.m.

Therefore, the court should render Judge

J.P. Vukasin's opinions, orders and judgments void not only in this single instance, but also over the past ten (10) years. Petitioner has been denied due process and equal protections secured by the constitution under the laws by his apparent judicial misconduct. The records show that Judge Vukasin violated his oath of office. In Bradley v. Fisher, 13 Wall, 80 S.Ct. 646, 648 (1872), this Court held that:

> Wilful abuse of power, corrupt exercise of office, express malice toward an individual, and working intentional injury to him by means of false entries made by a false entry in the records of a court of general jurisdiction, are not judicial acts and are not within the iscretion of the judge, and satisfactory proof of their facts is admissable as evidence to usurp the wrong done by such acts, to show that in a particular case, the judge attempted to create for himself a jurisdiction not given by law.

FRAUD ON THE COURT.

In Greater Boston Television Corporation v. F.C.C., 463 F.2d 268, 278 (1971) the court held that:

> The spirit of "fraud on the court" rule is applicable whenever the integrity of the judicial process or functioning has been undercut - certainly in any instance of misconduct by a party.

Defendant obtained Summary Affirmance by a continuing pattern of misrepresentation since the inception of her case. However, the final overt act, a continuing conspiracy with VA defendants is manifested in Appellees' Motion for Summary Affirmance dated August 25, 1993 by counsel Beth McGarry, Assistant United States Attorney. In her discussion, Ms. McGarry states that:

1. Rogers' Motion To Recuse The Honorable John P. Vukasin, Jr., Pursuant to 28 U.S.C.§§ 144 and 145, was Wholly Without Merit. McGarry had knowledge of the falsity of Judge Vukasin's representations since, as the attorney of record on behalf of the government, she knew that petitioner was not given a hearing before Judge Vukasin as alleged in his Order filed September 8, 1992. Petitioner submits defendent McGarry's Motion for Summary Affirmance by which petitioner will establish that this protracted litigation is the direct result of the government's misconduct in the judicial process. Therefore, McGarry obtained judgment in the government's favor once again by a series of misrepresentation of material facts. [E-16].

EXCEPTIONAL CIRCUMSTANCES THAT PREVENTED APPELLANT FROM APPEALING THE DECISION OF JUDGE CECIL POOLE ON JANUARY 16, 1977.

Defendant made a false representation to the court. This issue is factually supported in Appendix F.

First: Defendants fraudulently concealed her discharge papers from her and retired them to the National Personnel Record Center, GSA, St Louis, MO.

The significance of defendants actions left petitioner without any information as to her rights under VA regulatory laws. She first made an inquiry about obtaining information on her retirement deductions on May 11, 1978. [F-1]. Petitioner was informed by the VA that her records were retired. [F-2]. Therefore, three years had passed and the VA withheld this information from her. She also requested her personnel records from the U.S. Civil Service Commission on February 8, 1979. [F-3]. Because of the delay, petitioner retained counsel on

May 9, 1979 to preclude any further delay. [F-4]. A prompt response from the Office of Personnel Management, resulted on May 22, 1979. [F-5]. On VA form 2315-101, Employee Service Station, Rogers discovered that her signature was missing. Also, she was only entitled to a refund of her contributions toward the retirement plan. No remarks were entered concerning the entries. [F-6]. Petitioner discovered the reasons for curtailment of this disbursement was that she was not entitled to either the government's contributions nor to a modest annuity because these records designated that she was charged with "misconduct". She was never informed of the charge of "misconduct." Therefore, she has been denied due process to refute this charge. [F-7]. This form cites that: " S.F. 2815 completed and copy provided employee. 11-6-75." This statement is also false.

Second: VA regulations. VA regulations did not provide for an appeal. Under DM&S regulations, MP-5, Part II, Chapter 8, DISCIPLINARY ACTIONS, GRIEVANCES AND HEARINGS, SECTION A, stated as follows:

> 8a.16 Appeals
> Disciplingary actions by the Administrator under provisions of this section are not subject to appeal since his decision is final."

Third: Defendants obtained judgment on February 16, 1977, in C-73-0739 CFP, by fraud.

> Under under 6.08 REVIEW OF PROFESSIONAL COMPETENCY it states in para:
> "a. General. When any question arises concerning the professional competency of a full-time physician, dentist, or nurse anesthetist who has satisfactorily

completed a 3-year probationary period, consideration will be given to a review by an appropriate Professional Standards Board."

Petitioner, at the time of her administrative hearing, was for all intents and purposes, considered to be in her seventh year of service.

The question of professional competency arose on January 10, 1973, by which Dr. Ernst Burian sent a Memorandum to the Chief, Nursing Service, Helen F. Hennessy, R.N., concerning the nursing care of a veteran. Here he states in para:

"3. Both of these incidents show incompetence, poor judgment and assumption of responsibilities for the physician in charge." [G-1].

Under VA regulations 6.08 REVIEW OF PROFESSIONAL COMPETENCY it states in E(3) that:

"(3) The membership of the Professional Standards Board will be outlined in MP-5, Part II, Chapter 2, paragraph 4,5.

This regulation is provided in the submitted Motion No. 2, Z. [Z-9 (attach. h)] which defines the membership of Professional Standards Board as being composed of:

"(g) solely of nurses to deal with nurses."

The misrepresentation made by defendant to the Court in the February 11 Hearing before Judge Poole is shown by Donna S. Humes, RN, herself, who designates her role as Chairman of the Disciplinary Board [see Z-9 (attach. e)]

Furthermore, in the letter of Proposed Discharge dated February 6, 1975 from Paul O. Battisti, Region 7, he also refers to the Board as a disciplinary board. [See G-2, para 4]. The validity of the composition of the disciplinary board became an issue of conflict when counsel for petitioner raised

the issue in pleadings filed during this period. Petitioner's position was also that:

B. The VA Administrator has no authority to make laws.

The records submitted here speak for themselves. In defendants Motion for Summary Judgment dated January 28, 1977, he states [see I-3, Section III] that the disciplinary board was properly convened because "the rule that a physician must sit on nurses' disciplinary boards was changed on May 8, 1974 to provide for peer review." He further adds that "the Administrator approved the change on May 8, 1974" [G-3, Section III], so that the Chief Medical Director, John D. Chase, M.D., selected the chairman of DM&S Central Office Boards as defendant states in his Motion for Summary Judgment, January 28, 1977 [see I-3, Section III] by Memorandum dated May 3, 1974 [see Z-9 (attach. "b")]. Petitioner's affidavit, dated September 9, 1994, shows that she had no prior knowledge of this false representation, and she justifiably relied on this misrepresentation. [G-4].

She later learned, by her research in The Congressional Quarterly, Weekly Report, dated April 27, 1974, that Mr. Johnson, the Administrator was forced to resign and submitted his resignation on May 3, 1974 which made this Memorandum [Z-9, attach "b"] ineffective. The Administrator's impending resignation was also reported in the New York Times on April 22, 1974. Furthermore, the Federal Times, on April 17, 1974 also confirmed Mr. Johnson's problems as seen here calling for his ouster. [G-5]. Therefore, it is implausible that Mr. Johnson had his mind on the composition of disciplinary boards.

In the fall of 1982, petitioner did in-

depth research after receiving hearsay evidence that a bill was introduced, S 2908, by the 94th Congress, 2nd Session, Calendar No. 1140, September 3, 1976, to pass new legislation that would require a nurse to chair disciplinary boards. This provision did not pass in the bill, and between 1979-1982 petitioner was unable to obtain effective counsel until 1982. [G-6]. She submitted a new independent action under Rule 60(b)(3) and filed same in November 1983 in USDC, San Jose, in Civ. No. C 83-20374 WAI. Defendants now introduced a declaration by Paul Dugan dated February 13, 1984, in which he controverts defendants' earlier position that the regulations had been changed in MP-5, Part II, Chap. 8, Section C. [G-7].

On April 19, 1984, Judge Ingram issued his ORDER (see D-2) denying petitioner relief. His Judgment in C 83-20374 WAI was also rendered the same day. [See C-3]. One of the requirements for relief cited by Judge Ingram was to show an unconscionable scheme. Therefore, petitioner filed a new action in C 83-1519-JPV as directed by the Court's previous orders for new filings. Petitioner submitted a detailed analysis showing why the Administrator had no unilateral authority to change the law with respect to the composition of disciplinary boards as shown in the TABLE OF CONTENTS filed April 17, 1985. [G-8]. She also introduced defendants' unconscionable scheme showing civil rights violations as stated in this TABLE. Judge J.P. Vukasin, as shown in her MOTION FOR DISQUALIFICATION of him returned this extended brief after it was filed in Court. [See prev. E-8]. Judge Vukasin denied petitioner's motion by asserting it was "meritless". Judge Vukasin imposed sanctions on her counsel as specified at the Hearing on June 20, 1985. [See

E-8]. He affirmatively reinforced this penalty on his JUDGMENT filed on July 10, 1985. Under 38 U.S.C. §4110, the law states that the Administrator will appoint the Chairman of Disciplinary Boards. [G-9]. Therefore, petitioner invokes this Court to deny affirmance to this Judgment in C-73-0739-CFP because of defendants' fraud in the lower and appellate court (9th Cir.). "There is firmly established in the law the doctrine confirming the power of the court To set aside at any time any mandate that was procured by effecting a fraud on the court." Greater Boston Television Corporation v. F.C.C., at p. 270 quoting Cord v. Smith, 370 F.2d 418, 423 (9th Cir. 1960).

REASONS FOR SEEKING RELIEF IN 1992

In American Science of Engineering, Inc. v. California, 571 F.2d 58 (1978) it states:

> Jurisdiction under the civil rights statute only comes into play where a cause of action exists. 28 U.S.C. §1343.

Petitioner filed her original civil rights suit on May 3, 1973 under §1343. On July 16, 1992, petitioner submitted three motions for relief in U.S.D.C. by discovery of new evidence showing that Dr. Ernst Burian, on whose order the court sustained her discharge, was unlicensed to practice by state and federal laws. [See Z, 27-"b" of Motion No. 2 submitted here in its entirety.] She addressed this issue in detail in C-73-0739-JPV in Motion No. 1. In her Motion No. 2 in C-83-20374 WAI, she respectfully petitions the Court to review the whole record since it contains ancillary jurisdiction and addresses a common nucleus of operative fact between all defendants under color of law by state action. It is because of state action, under color of law, petitioner has been denied equal protection under the Fourteenth Amendment. In her

Argument in Motion No. 1 she introduced relevant evidence showing that Dr. E. Burian was unlicensed to practice in California. Therefore, Dr. E. Burian was practicing by fraud. See Sublette v. Tinney, 9 Cal. 423 (1858). In her third Motion, C-83-0719-JPV, she establishes a conspiracy, by defendants' overt acts, through concerted action in furtherance thereof. Her TABLE OF CONTENTS in Motions 1 & 3 are submitted here for information. [G-10; G-11]. The transcription of the Hearing before Judge C.F. Poole in C-73-0739 on February 11, 1977 is submitted here. [G-12]. She initially received an admonishment on the charge of allegedly changing a physician's order. After her response [see Z-6] dated July 15, 1973, the charge was reintroduced in the letter of charges. [See G-2]. In 1991, petitioner discovered, by due diligence, that Larry Rouse was also not licensed to practice as a Behavior Modification Psychologist in the State of California and she submitted relevant evidence to that effect. The VA, therefore, for 19 years, fraudulently concealed the unlawful appointments of these two defendants from petitioner and the Court. See Bailey v. Glover, 88 U.S. 22 L.Ed. 636. The state defendants of the Nursing Department, SJSU, deprived her of a right guaranteed by the Fourteenth Amendment, to equal protection under the laws because she exercised her right to free speech under the First Amendment with respect to matters of concern to the citizens of California. These matters concerned the deficiencies in the education program which left students without adequate preparation in theoretical knowledge. Therefore, students were provided with copies of state exams so that they could qualify for post-graduate work in

Nursing. The State of California responded to petitioner's concerns about the deficiencies in her nursing program as well as young students just entering into practice in community institutions. [See Z-38]. Since graduating from SJSU in 1967, practitioner has been the victim of a conspiracy to deny her a liberty interest in her field of nursing. This became apparent after she first sought employment in Kaiser Hospital, San Francisco. In the summer of 1967, as her declaration shows [Z-40 (attach. a through d)], she was terminated from Kaiser on March 8, 1968. She applied for work at the VAPA and was interviewed by Helen Johnson, RN, Asst. Chief. She informed her of her previous termination which resulted, by state action, under color of law, and was assured it would have no effect on her federal employment. After 90 days, she was terminated from the VA, but she appealed this decision as stated in her letter dated 7/2/1968. [Z-43]. Petitioner was labeled a "troublemaker" because she voiced concern for the "therapeutic" nursing techniques used on a paraplegic veteran. This took place, as required for daily discussion, in a ward report. In her letter to Mrs. Miller, she established the conspiracy between state agents and private and federal parties. The VA had a symbiotic relationship with SJSU since their students used the clinical area for their nursing experience. [Z-44]. In 1971, after requesting a transfer from Bldg. 7 to Bldg., she was promoted to a Head Nurse position. She was actively misled by Chief Nurse H. Hennessy, RN, who stated in a memorandum dated January 15, 1971 that: "You may be assured of our contined support and assistance as you assume this position of increased responsibility." Eight months

later, her subordinates, as the record shows, were encouraged by petitioner's superiors to raise a protest. They met for this purpose on the premises of the VA parking lot and at Clara Cutler, RN's apartment, the Lyons Restaurant, and in Barbara Olsen, RN's home for the purpose of constructing a list of 20 charges which, stated initially that they should not be construed as a conspiracy. (Testimony paraphrased from the agency Hearing on April 10, 1974, of Katherine Pestana, RN.) On Friday, March 7, 1972 she was given a memorandum containing seven non-specific reasons for a failure in leadership. [H-1]. She was denied a hearing to respond to the charges, and therefore, denied due process. She was demoted in rank and not permitted to participate in the Leadership classes currently given other head nurses. In furtherance of this conspiracy, defendants took overt acts by the power of collective action in alleged counselings [H-2] and again, in the office of the Chief, Nursing Service. [H-3]. She raised her objections to this meeting and took the Fifth Amendment as stated in her memorandum. [H-4]. DM&S Supplement MP-5, Part II, Chapter 6 states under 6.06(c) that:

> (1) The counseling conference will be informal and confidential and of such a nature as to inform each employee, verbally and in writing, of the manner in which he is perforing or failing to perform his assigned duties.

The overt acts resulted from the VA admitting that they are permitted use information on record from her OPF to meet management's objectives. [Z-17]. Petitioner filed a previous grievance after being informed of disclosure of information in her OPF. [Z-13]. This information was then disseminated

to outside parties [Z-14, 15, 16, 18 & 19]. Petitioner was permitted to view her OPF, but found no adverse material. Instead, she found a laudable report from H. Hennessy, RN. [Z-20]. She was actively misled because the discriminatory conduct continued as shown in her statement to the Hospital Director [H-5]. Further overt acts were taken by withholding her periodic step increases. [H-6]. On October 29, 1974, her step increase was withheld by H. Hennessy, RN, Chief Nurse. [H-7]. Again, on November 8, 1974, by letter to her counsel [H-8]. She received an unsatisfactory Proficiency Report from her Head Nurse E. McShan on August 3, 1973 under penalty of perjury. [H-9]. On the basis of this alleged unsatisfactory report, petitioner was removed from the clinical area and segregated from her peers. She was not permitted to return to the clinical area because of this unsatisfactory report. She was denied due process of law since she was unable to obtain a satisfactory proficiency report because she was illegally detained. On April 15, 1989, E. McShan informed petitioner that she was not the author of this report. See Hazel Atlas v. Hartford Co., 322 U.S. 238 (1944). In 1977, the conspiracy widened and she was ordered to see a medical doctor by Robert P. Duggan [I-1] and on May 23, 1971 she was ordered by Dr. I. Myers to report for a psychiatric examination. [I-2]. No reasons were given, which is a violation of due process. See Stewart v. Pierce, 484 F.2d 1031 (9th Cir. 1973). Dr. R. Burr, psychiatrist, labeled her with a diagnosis of "obsessive-compulsive" personality disorder which predated her employment. He stated that petitioner would produce neurotic anxiety in most jobs where she might work. Her pre-employment physical

shows no such personality deviation. [I-3]. In 1971, she had a routine physical exam which also showed no such deviation. [I-4, see 42]. In 1991, petitioner discovered that Dr. R. Burr was employed by the VA as a fee-based consultant. [I-5]. Under 20 CFR, Ch.1 §10.403. DOL had no authority to send petitioner for an examination as her case was disallowed on October 31, 1974, and June 2, 1975. Dr. R. Burr violated petitioners Fourth Amendment rights. Petitioner engaged in extraordinary diligence to discover the two missing references in her OPF. She filed suit in USDC May 3, 1973. The contents of her OPF were the primary issue as stated in a letter from her counsel to Mr. Wax. [I-6]. A grievance hearing was offered by the VA to the court. On June 4, 1973, a status report to the court was made alleging several major deficiencies in the hearing. [I-7]. She still had no access to this information. Petitioner then sought this information from the Nursing department in SJSU in 1979. [Z-11]. She subpoenaed Dr. Burr's records on February 8, 1984 after diligently pursuing same through the OWCP. In response to her subpoena, defendant threatened her with sanctions by letter dated February 15, 1984. [Z-10]. She finally wrote to Dr. R. Burr himself on June 26, 1991. [I-8]. Dr. Burr responded by saying that he felt her records were either stored in a difficult place or had been destroyed. [I-9]. Therefore, she met the standard of establishing an essential element in her case in which the VA has fraudulently concealed. See Celotex Corp. v. Catrett, 106 S.Ct. 2548 (1986). Also, Verdon v. Consolidated Rail Corp., 828 F.Supp. 1129, 1131 (S.D.N.Y. 1982) where it was held that an action accrues by civil rights laws based on federal laws when a

plaintiff knows or has reason to know the basis of his action. Petitioner knows that these two references were from San Jose State Nursing department faculty and Patricia Leonard, of Kaiser Hospital, San Francisco. Her declaration narrows these references down to the above two sources. [I-10]. Therefore, petitioner has now been burdened with two badges of infamy; "professional misconduct" from the VA and "obsessive-compulsive personality disorder" from Dr. R. Burr. She has been denied the opportunity to refute both charges. Therefore, she has been denied due process of law. Her affidavit dated September 9, 1994 states that she has been the victim of an unconscionable scheme that goes to the loss of fundamental, but basic, rights under the due process clause of the Fourteenth Amendment. [See D-1]. As a result of this misconduct by defendants, her case has been nationally publicized in Rogers v. United States Dept. of Labor, 607 F.Supp. 692 (D.C.Cal 1985), and Rogers v. U.S. 15 C.Ct, 692 (1988). If these cases are used as precedents on other victims also, it will be a manifest injustice just as it is, thus Petitioner invokes the Court's inherent powers to vacate these judgments and orders in C-73-0739-JPV; C-83-0719-JPV; C-84-1519-JPV; and C-83-20374 WAI. She comes to this Court as a last resort. In Norlander v. Schlek, 345 F.Supp. 595 (1972) the Court held that this plaintiff was deprived of due process under the Fourteenth Amendment to be considered fairly for public service because she too had unsatisfactory references concealed from her. In Shelley v. Kramer, 68 S.Ct. 836 (1948), this court held that:

> State action within the Fourteenth Amendment refers to execution of state power in all forms and when the effect of that action is to deny rights subject

> to the protection of the Fourteenth Amendment it is the obligation of the United States Supreme Court to enforce the constitutional demands. U.S.C.A. Constit. Amend. 14.

In Kletschka v. Driver, (CA 2) 411 F.2d. 436 (1969). This court held that disciplinary action by the VA is not committed to agency discretion. Petitioner has alleged that she is the victim of a class-based discriminitory animus. See Turner v. Fouche, 90 S.Ct. 532, 541 (1970). In the hearings on FEDERAL EMPLOYEE'S COMPENSATION BASED ON CORRECTION OF UNJUSTIFIED PERSONNEL ACTIONS before the Eighty-eighth Congress, it was stated under Purpose that this legislation would:

> [To] assure that all classes of Federal Officers and employees can be treated equitably and uniformly with respect to compensation and employment benefits as a consequence of actions taken to correct unjustified or unwarranted personnel actions.

The Hearing Before the Committee on Post Office and Civil Service House of Representatives of the Eighty-Eighth Congress, dealt with Federal Employees' Compensation based on Correction of Unjustified Personnel actions. H.R. 4837 was prospective and HR 4838 was retroactive. Petitioner is seeking reinstatement under the APA and Back Pay Act of 1966 with the provisions stated under 5 U.S.C.A. § 5596. [D-2]. She is also seeking exemplary damages in the sum of $50,000.00 from Dr. Robert C. Burr, since, although he had no physician-client duty to petitioner, he had an ethical duty not to injure her in conspiracty with defendants, in her professional career by imposing a psychiatric stigma upon her which has also foreclosed a liberty interest in her field of nursing. In the case of Gradsky v.

United States, 376 F.2d. 993, 996 (5th Cir.) 1967, this Court acknowledged that: "A party to a conspiracy is liable as a principle for all offenses committed in furtherance of the conspiracy while he is a member of it." Quoting Pinkerton v. United States, 328 U.S. 640, 66 S.Ct. 1130, 90 L.Ed. 1489. Her affidavit as stated here shows irreparable injury. [I-23]. Dr. Burr based his diagnosis in his report dated September 29, 1977 (p.5) on the following: "Behavior similar to that which caused trouble at the VA can be seen in the record of her performance as a student at San Jose State, in her job at San Francisco Kaiser Hospital, and at El Camino Hospital."

CONCLUSION

Petitioner invokes the inherent power of this Court to issue a writ of mandamus to the lower court and to vacate the mandate of the Ninth Circuit Court of Appeals for the Northern District of California. Also, final judgment in her case and any other relief ordered by the court under 5 U.S.C.A. §5596, and civil rights laws. Petitioner alleges that her claims accrued in 1991 for liability created by statute for personal injuries. Cal.Civ.Code §338(1-4)(West 1982); see Wilson v. Garcia, 105 S.Ct. 1938, 1949 (1985); Smith v. Cramens, 308 F.2d.187, 190 (9th Cir. 1963). Petitioner suffers a legal wrong of discharge on the orders of an unlicensed physician by an unjustified personnel action.

Respectfully submitted,

Lynette Rogers, *pro se*
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

FEDERAL EMPLOYEE'S COMPENSATION BASED ON CORRECTION OF UNJUSTIFIED PERSONNEL ACTIONS

HEARING BEFORE THE COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
EIGHTY-EIGHTH CONGRESS
FIRST SESSION ON

H.R. 4837 and H.R. 4838
BILLS TO PROVIDE FOR THE PAYMENT OF CERTAIN AMOUNTS AND RESTORATION OF EMPLOYMENT BENEFITS TO CERTAIN GOVERNMENT OFFICERS AND EMPLOYEES IMPROPERLY DEPRIVED THEREOF, AND FOR OTHER PURPOSES

MAY 10, 1963

A BILL To provide for the payment of certain amounts and restoration of employment benefits to certain Government officers and employees improperly deprived thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Back Pay Act of 1963."

SEC. 2. For the purposes of this Act--

(1) "agency" means--

(A) each executive department of the Government of the United States;

(B) each agency or independent establishment in the executive branch of such Government;

(C) each corporation owned or controlled by such Government;

(D) the Administrative Office of the United States Courts;

(E) the Library of Congress;

(F) the General Accounting Office;

(G) the Government Printing Office;

(H) the Botanic Garden; and

(I) the municipal government of the District of Columbia.

SEC. 3. Each civilian officer or employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action taken on or after the date of enactment of this Act, which has resulted in the withdrawal or reduction of all or any part of the pay, allowances, or differentials of such officer or employee--

(1) shall be entitled, upon correction of such personnel action, to receive for the period for which such personnel action was in effect, an amount commensurate with the amount of all or any part of the pay, allowances, or differentials, as applicable, which such officer or employee normally would have earned during such period if such personnel action had not occurred, less any amounts earned by him through other employment during such period; and

(2) for all purposes, shall be held and considered to have rendered service for such agency during such period, except that such officer or employee shall not be credited, by reason of the enactment of this Act, leave in an amount which would cause any amount of leave to his credit to exceed any maximum amount of such leave authorized for such officer or employee by law or regulation.

SEC. 4. The United States Civil Service Commission shall prescribe regulations to carry out the provisions of this Act. Such regulations shall not be applicable with respect to the Tennessee Valley Authority and its officers and employees.

SEC. 5. (a) There are hereby repealed--

(1) section 6(b) of the act of August 24, 1912, as amended (5 U.S.C. 652(b)); and

(2) that part of the third proviso of

the first section of the Act of August 26, 1950 (5 U.S.C. 22-1) which reads: ", and if so reinstated or restored shall be allowed compensation for all or any part of the period of such suspension or termination in an amount not to exceed the difference between the amount such person would normally have earned during the period of such suspension or termination, at the rate he was receiving during the period of such suspension or termination, as appropriate, and the interim net earnings of such person."

(b) Notwithstanding the repeal of certain provisions of law made by subsection (a) of this section, such provisions of law so repealed shall continue to have full force and effect with respect to unjustified or unwarranted personnel actions taken prior to the date of enactment of this Act.

SECTION ANALYSIS

Most of the situations which could give rise to the retroactive payment of compensation or employment benefits under the provisions of this draft bill are already covered by the backpay provisions of Public Law 623, 80th Congress, Public Law 733, 81st Congress, the powers of the Civil Service Commission under the Veterans' Preference Act, and a number of decisions of the Comptroller General interpreting these authorities. The backpay provisions of this draft bill, however, would be more uniform and in some cases more equitable than those now available. In addition, the coverage of the draft bill is designed to encompass all employees of the executive branch and certain other agencies. Significantly, the draft bill neither requires any agency to review any kind of personnel action, nor defines or restricts the nature of corrective actions themselves. Moreover, the draft bill does not modify the procedural requirements of any formal system of appeals. All the draft bill requires is that where a right of appeal has

been specifically granted by law or regulation, or where management on its own initiative has discovered a personnel action which in all equity should be reviewed, any corrective action as a consequence extended to a Federal officer or employee with respect to adjustment of compensation or employment benefits must be retroactive in its effect, complete in its remedies, and consistent in its application.

Section 1 of this draft bill authorizes the use of a short or popular title in citing this legislation.

Section 2 of the draft bill defines "agency" in sufficiently broad terms to include all parts of the executive Branch, the government of the District of Columbia, and other establishments of the Federal Government which look to the executive branch for personnel management leadership.

Section 3 defines the coverage of the bill as to persons and the terms under which such persons shall be entitled to backpay. All officers and employees of the agencies encompassed by the definition of "agency" in section 2 are covered. This includes persons in both the competitive and excepted services in these agencies.

"Administrative determination," as used in this section, means a decision made by appropriate authority on its own initiative as opposed to a decision which it has been required to make in order to dispose of a formal appeal. The purpose of this provision is to grant agencies the right at their own option to correct injustices which they identify themselves, especially where no avenue of appeal may be open to the individual involved.

"Timely appeal," as used in this section means a request for reconsideration of an official personnel action adversely affecting an employee, which request: (1) is initiated by the employee or his representative; (2) is

properly made to an agency or to the Civil Service Commission under an appeals system or procedure established by law or regulation; (3) is accepted by the authority administering the particular appeals system or procedure involved. This provision of itself creates no new concepts of timeliness. On this point it relies entirely on the practices established in such other laws and regulations dealing with employee appeals as may now exist or later come into being. The purpose of this provision is to prevent employees from pressing stale claims for backpay when they themselves have slept on their rights.

The phrase, "unjustified or unwarranted personnel action," follows the language of Public Law 623, 80th Congress, the primary backpay authority at the time this proposal was drafted. All personnel actions in the administration of the Federal personnel systems are taken under some authority. Each such personnel action should be intended to be a proper exercise of the powers established by the particular law or regulation under which the action is taken. Nevertheless, occasionally errors are made in the exercise of these powers. Personnel actions which are found to reflect such errors may be defective on equitable or procedural grounds or both. The ruling interpretation of the phrase, "unjustified or unwarranted" with reference to adverse actions in the current administration of Public Law 623, 80th Congress, encompasses both equitable and procedural considerations following the decisions of the court of Claims in Stringer v. U.S., 117 C. Ct. 30, and Garcia v. U.S., 123 C. Ct. 722, and of the Comptroller General in 34 C.G. 568.

"Appropriate authority" means that agency, office, or official empowered under applicable law or regulation to correct or direct the correction of the unjustified or

unwarranted action. in some cases this could be the Civil Service Commission as established, for example, in the Veterans' Preference Act. In many instances, such authority would be found at some level of agency management as defined in applicable regulations and delegations of authority thereunder.

The phrase, "applicable law or regulation," refers to the laws and regulations which provide the bases for operations under the Federal personnel systems. The draft bill looks to these laws and regulations which exist now or may later come into effect--

(1) To provide avenues and procedures for the reconsideration of unjustified or unwarranted personnel actions.

(2) To provide the legal basis for taking proper personnel actions and for correcting unjustified or unwarranted ones.

(3) To establish the locus of the authority to correct improper actions.

Section 3(1) establishes an entitlement to back pay in any situation where a personnel action which has terminated or decreased the compensation of a Federal officer or employee is subsequently found unjustified or unwarranted and corrected by appropriate authority. For clarity the four essentials for an entitlement to backpay under this act are set out below:

1. An official personnel action must have been taken which reduced or diminished some part of an individual's usual salary, wages, or other compensation from Federal employment. In other words, in effect, something must have been taken away.

2. The personnel action in question must have been made the subject of review by appropriate authority either because of a timely appeal or because appropriate authority on its own initiative decided to review that action. In other words, the

specific action which precipitated the employee's loss must have been reexamined.

3. The personnel action in question must have been found by appropriate authority to be unjustified or unwarranted.

4. A corrective action consistent with applicable laws or regulations must have been authorized by appropriate authority as a consequence of its decision.

Section 3(1), therefore, establishes for pay purposes the principle that an employee should be made whole following the correction of an unjustified or unwarranted personnel action which reduced his compensation in some way. As would be defined in detail in the regulations, the adjustment in compensation recognized any obvious things in the normal course of events which would have affected the amount of compensation. With respect to reducing that amount, these would include situations, such as: death before final adjudication of an appeal, separation or furlough as a result of reduction in force, transfer to another agency, and imprisonment for crime. With respect to increasing the amount of compensation, the draft bill assures credit for increments such as periodic within-grade increases and general pay raises to which the employee would have been entitled had he not been subject to the unjustified or unwarranted action. Public Law 623, 80th Congress, and Public Law 733, 81st Congress, unfortunately prevent crediting these increments in computing the amount of backpay. On the other hand, both Public Law 623, 80th Congress, and Public Law 733, 81st Congress, are currently interpreted as including in a backpay computation the premium pay which an employee normally would have earned. To preserve this interpretation the phrase "would normally have earned," which appears in Public Law 733, 81st Congress, and which was discussed by the Comptroller General in 34 Comp. Gen. 382, has

been repeated in the draft bill.

Section 3(1), following the historical precedents in this area, provides that the amount of backpay to which an employee would be entitled would be reduced by whatever amount he earned through "other employment" during the period the action was in effect. The term "other employment" is taken from Public Law 623, 80th Congress, in order to assure a continuity of interpretation on this point. Both the Court of Claims and the Comptroller General view "other employment" as encompassing only that employment engaged in to take the place of the employment the employee had prior to the action against him. This interpretation was discussed by the court in Jackson v. U.S., 121 C. Cl. 405, and by the Comptroller General in 32 Comp. Gen. 408. Therefore, if an employee had been separated from his position, this amount would be the difference between what his Government income should have been and what he actually earned in an employment obtained to take the place of his Government job. If he had been demoted, the amount to which he would be entitled would be the difference between what his income should have been in the proper grade and what it actually was at the lower grade.

Section 3(2) by stating, "For all purposes shall be held and considered to have rendered service for such agency during such period,' provides for the complete restoration to the employee of seniority, service credit toward retirement, life insurance, health insurance, and all other benefits of employment which may have been affected by the action. This is consistent with the current administration of these matters following a court of Civil Service Commission restoration order. In addition, leave accumulation, excluded specifically from the backpay provisions of Public Law 623, 80th Congress, would be authorized uniformly by this draft bill

following the precedent of the more recent Public Law 733, 81st Congress. The excepting clause of section 3(2) assures that the usual ceilings on leave accumulation would be observed, as prescribed by the law or regulation covering the particular leave system to which the employee is subject.

Section 4 authorizes the Civil Service Commission to make such regulations as may be necessary to carry out the provisions of this proposal much as the Commission regulates in certain other pay areas, except that the Tennessee Valley Authority is authorized to make its own regulations. Day-to-day application of these regulations to individual cases would be the responsibility of the agencies concerned. The General Accounting Office would resolve specific questions in individual cases as it does other matters involving claims and demands against the Government of the United States.

Section 5 repeals the backpay provisions of Public Law 623, 80th Congress, and Public Law 733, 81st Congress, except as to unjustified or unwarranted personnel actions taken before enactment of this proposed act.

STATEMENT OF PURPOSE AND JUSTIFICATION OF A DRAFT BILL TO PROVIDE FOR THE PAYMENT OF CERTAIN AMOUNTS AND RESTORATION OF EMPLOYMENT BENEFITS TO CERTAIN GOVERNMENT OFFICERS AND EMPLOYEES IMPROPERLY DEPRIVED THEREOF, AND FOR OTHER PURPOSES.

PURPOSE

To assure that all classes of Federal officers and employees can be treated equitably and uniformly with respect to compensation and employment benefits as a consequence of actions taken to correct unjustified or unwarranted personnel actions.

JUSTIFICATION

This legislative proposal consolidates what is generally referred to as "backpay" authority into one logical, equitable, and

comprehensive statement of entitlement with respect to compensation and employment benefits. It is more than a codification of current backpay authorities because these authorities, while adequate in many respects, may not be applied uniformly to all similar situations and do not afford completely consistent remedies. The proposal is not entirely new, however, because it has largely selected the best elements from these familiar authorities, welded them into one principle, and proposed the use of that principle in every instance where a question of backpay can be raised. Briefly this principle holds that an employee is entitled to be made whole whenever an erroneous personnel action which has terminated or reduced his compensation is corrected by appropriate authority. Significantly this proposal is not concerned with the substance of appeal rights, the structure of the appeals process, or the precise nature of the corrective actions.

This proposal could justify itself with principles of fair play or philosophical concepts of equity and justice. Fortunately for purposes of brevity, this is not necessary. It is also unnecessary to recount how the concept of backpay has been widely accepted in industry. The simple fact is that the trend in law, regulation and interpretation demonstrates clearly that the Congress, the courts, the agencies, and the Comptroller General have been thinking along these lines for a long time with particular emphasis on the past 15 years.

Background of current authorities

In 1947 it was pointed out in Congress, according to the legislative history, that a "glaring loophole in the present law" existed if an employee in the competitive service who successfully availed himself of a right of appeal could not always be reimbursed for the compensation he lost while his appeal was

pending. In 1948, after consulting the Civil Service Commission and others, Congress responded to this need by enacting Public Law 623, 80th Congress, as an amendment to the Lloyd-LaFollette Act.

Public Law 623, 80th Congress, authorizes backpay in nonsecurity cases involving improper separations and suspensions of nonveterans with civil service status in the competitive service and all veterans who have completed their trial or probationary period. The amount of pay is computed at the rate the employee was receiving at the time of the improper action and covers the entire period the action was in effect. Leave accumulation covering the same period, however, was excluded from the other remedies to which an employee was entitled under the act.

In 1950, with the passage of Public Law 723, 81st Congress, Congress acted again in the backpay area, this time protecting executive branch employees suspended or terminated in erroneous security actions. The amount of backpay is computed as under Public Law 623, 80th Congress; however, agency heads are authorized to determine whether the employee will be paid for all or part of the period of erroneous suspension or removal. Interestingly, agency practice under this law has been to authorize payment for the entire period almost without exception. More complete as to benefits, Public Law 733, 81st Congress, has been interpreted to permit leave accumulation covering the period of the erroneous action.

The third major source of backpay authority is the Veterans' Preference Act of 1944, as amended. This act has been interpreted as authorizing back pay in cases involving improper demotions of veterans who have completed a trial or probationary period and in cases arising as a result of erroneous reduction-in-force actions whether or not the employees concerned are veterans.

In recent years the trend of Comptroller General's decisions interpreting these authorities has been toward greater flexibility. This trend notwithstanding, however, it is apparent that these authorities, as now stated, provide an inadequate basis for full solution to the backpay problem. If the problem is to be corrected, new legislation must be the answer.

The need for change

Most backpay situations in the Federal Service are already covered in some way by current authorities. This factor itself tends to demonstrate that the principle of backpay as part of corrective action is well established. It suggests further that the reason the backpay picture is not complete today is more a matter of oversight than intentional arrangement. It is apparent that whenever Congress has faced the problem of backpay, it has never intended its action to discriminate against any employee who could build an equitable claim. Circumstances, unfortunately, have led to a piecemeal approach to the back pay problem.

As a consequence, veterans are now afforded broader backpay benefits than nonveterans and at any given moment there are still many veterans and nonveterans alike who could not be awarded backpay at all except in the correction of erroneous reduction-in-force actions. This number would include all employees serving probationary or trial periods, and many nonveterans who are employed by their Government outside the competitive civil service.

Private relief legislation in individual cases cannot answer the problem, because it tends to discriminate against the person who does not seek special consideration beyond the remedies available to all. In the interests of both uniformity and equity, therefore, there is a strong case for

improving the present backpay authorities. The case is particularly strong when it is recognized that the step toward a better backpay authority is a small one in terms of costs and administrative adjustments. No great number of cases should add appreciably to current costs and the handling of all backpay cases would be little different from current procedures.

Impact of the current proposal

There are four features of this legislative proposal which should be kept in mind in order to understand what it is designed to accomplish and, just as important, what it is not designed to do:

1. *The comprehensive nature of this authority.*--The proposal assures that backpay protection would be available to a Federal employee whenever an unjustified or unwarranted personnel action which diminished his pay is corrected in his favor. The proposal does not attempt, however, to specify the precise nature of the corrective actions. It requires only that the unjustified or unwarranted action be corrected before an entitlement is created. It is inherent in the use of the term "correction" that the administrative action referred to must be one which is consistent with applicable laws and regulations. The protection does not hinge on the operation of any particular system of appeals, but would be available as a consequence of the operation of any system of appeals. In addition, where no avenue of appeal is available, an agency itself may award backpay to an employee merely by acknowledging that its action affecting the employee adversely was unjustified or unwarranted and correcting it.

2. *The test of diminished income.*--Many things may happen to the disadvantage of the employee on the job which may have a real or potential effect on his finances--a hoped-for

promotion or job classification upgrading may be denied or delayed, a transfer to a new location may be more expensive than anticipated, a free official parking space may be lost, etc. This proposal does not deal with situations of this sort. The purpose of this proposal is only to permit an agency to make an employee whole from a pay and benefits point of view following its decision to correct an unjustified or unwarranted personnel action against him.

To accomplish its purpose this proposal used the "test of diminished income" which must be applied in every potential backpay situation before an entitlement is established under this authority. The unjustified or unwarranted personnel action, in effect, must have taken away some part of the normal salary, wages, or other compensation of the employee affected. In other words, if no part of the employee's salary, wages, or other compensation as a Government employee was actually diminished by the improper action, there can be no claim to backpay when that action is corrected.

3. *The requirement for timely action.*--In order to preserve his right to backpay, the employee under this proposal would be required to exercise the rights of appeal open to him in a timely manner. For example, an employee whose position was downgraded would lose his right to demand backpay unless he made a timely and successful effort to appeal the downgrading action. Should that employee be promoted sometime later in a routine reallocation of his position, such reallocation would have no back pay implications.

4. *The advantages of agency initiative.*--By permitting an agency to authorize back pay on its own determination in correcting an unjustified or unwarranted personnel action, this authority introduces two new elements of flexibility which strengthen the corrective

powers of management. First, when an agency discovers it has inadvertently taken an unjustified or unwarranted action, it would be free to correct the action immediately on its own initiative with an appropriate pay adjustment. This avoids the loss of time and resources involved in an appeal over a matter which the agency may feel in advance should be settled in the employee's favor. Second, when an agency desires to extend backpay adjustments uniformly to all persons in the same circumstances when an appeal is won by any one of the persons involved, it would be free to do so on its own initiative.

In a recent case, for example, a group of veterans in wage board jobs successfully appealed to the Civil Service Commission their demotions as a result of job classification downgradings and were awarded backpay. A nonveteran worker in the same group, who had no right of appeal to the Commission, benefited by the subsequent reinstatement to grade but was denied the backpay adjustment his associates received, because the agency had no authority to pay him. This proposed authority would have permitted the agency, had it desired, to authorize the same kind of adjustment to all of the employees involved.

Cost estimate

It is very difficult to assess the cost involved in this proposed bill. This is not because these costs would constitute a major expenditure. Instead it is because "added" cost is the information needed while readily available information unfortunately reveals little about current cost. Today agencies generally absorb the costs of compensating employees entitled to backpay. Under the proposed bill, no change in this is envisioned.

Potentially some agencies may have a somewhat larger number of cases involving backpay entitlement than they have at

present. On the other hand with such clear-cut and comprehensive entitlement established, agencies would have an added incentive to conduct their appeal and review activities in a timely and expeditious manner in order to minimize the cost of such entitlements. Moreover, the draft bill would tend to limit the size of retroactive payments because employees who neglect to use their appeal rights, if any, in a timely manner would lose their right to demand backpay.

In the benefits area it would be virtually impossible to "cots" the accumulation of leave covering periods of improper separation or suspension as authorized by the draft bill. Taken at different times, leave has different values. In addition, while terminal lump-sum annual leave payments can represent a cash expense, sick leave should have no actual value unless the employee is ill. It would seem reasonable to assume, therefore, that this legislative proposal would create no new costs or inconveniences in the leave area more burdenscme than those agencies are adjusting to now.

Those benefits to which employees are entitled on a contributory basis, such as retirement, life insurance, and health insurance, would not constitute added costs under the draft bill. The employee would continue to be required to make up his back contributions, along with his taxes, for any period during which they were not withheld. This requirement stems from the fact that where an employee is granted the benefits of the administrative fiction of having "rendered service" he also assumes a responsibility for the obligations which that service would have imposed.

It is about as difficult to estimate the number of new backpay entitlements which would arise under this proposal as it is to assess the value of these entitlements. The

size of the new groups covered in some instances is large. Nevertheless, the potential number of backpay cases likely to arise from these groups, experience tells us, is surprisingly small. For example, the new proposal would give added protection to career nonveterans (there are about 1 million nonveterans in the competitive service). However, in the first 6 months after July 1962, when appeal rights of nonveterans in the competitive service were made the same as those of veterans, the Commission received fewer than 100 appeals, which, if decided in favor of the employee, could have resulted in entitlement to backpay under this proposal. We do not know how many such cases were handled at agency levels under circumstances which would have involved backpay. We assume the number is also small. The number of appeals of nonveterans is expected to increase with time but will still be a small proportion of the total number of nonveterans in the competitive service.

Nonveteran employees in excepted positions for the first time would be entitled to backpay if they lost compensation as a consequence of unjustified or unwarranted suspensions, separations, or demotions for cause. At present, these employees, and there are about 100,000 of them, have no appeal to the Civil Service Commission in such actions, and agencies have considerable flexibility in actions affecting their tenure. Under this proposal, therefore, there would be only as many new backpay entitlement cases involving these employees as procedures under agency control would generate.

This proposal would also cover, for the first time, employees serving probationary or trial periods. At any one time, there are probably between 100,000 and 175,000 such persons throughout the service. The proposal

requires, however, that there can be no entitlement to backpay without a finding that the adverse action involved was unjustified or unwarranted. Compared to persons who have completed their trial period, the appeal rights of probationary employees are very limited. Naturally this would tend to keep down the number of entitlement cases.

Under section 2.301(c)(2) of the Commission's regulations, the Commission considers appeals to termination based on conditions arising prior to the appointment of probationers in the competitive service. In less than 100 cases last year were Commission determinations such than an employee would have been entitled to backpay. A probationary or trial period employee does not have a right to appeal to the Commission.

In conclusion, the Commission is unable to estimate the costs of this proposal precisely without an expensive and detailed study going into the experience of each Federal agency. With the facts which are available, however, it seems safe to estimate that less than $500,000 per year in additional costs would be involved Governmentwide and that most of these costs would be of the type which agencies customarily absorb in the normal course of operations. The proposed legislation will not involve additional expenditures for personnel services to administer its provisions.

---

(2)

941100 DEC 22 1994

No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

LYNETTE ROGERS, *pro se*
Petitioner

In Re ROGERS

PETITION FOR AN
EXTRAORDINARY WRIT

APPENDIX

LYNETTE ROGERS, *pro se*
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

410 pm

INDEX/APPENDIX

A-1	JUDGMENT, U.S. Court of Appeals for the Ninth Circuit (hereinafter USCA (9th cir.)) in No. 94-16253 CT/AGf: CV-73-00739-SBA filed Sep 27 1994
A-2	JUDGMENT, U.S.C.A. (9th Cir.) in No. 92-16038 CT/AG: CV-73-00739-JPV filed Nov. 28, 1973.
A-3	ORDER, U.S.C.A. (9th Cir.) in Nos. 92-16938, 93-15383 filed October 13, 1993.
A-4	ORDER, U.S.C.A. (9th Cir.) in No. 94-16253 filed August 26, 1994.
B-1(1&2)	ORDER, United States District Court for the Northern District of California (hereinafter U.S.D.C.(N.D. Cal)) in No. 73-0739-SBA, filed June 21, 1994
B-2	ORDER, in No. C-73-0739-SBA filed June 22, 1994, in U.S.D.C. (N.D. Cal).
C-1(1-6)	ORDER in Nos. C-73-0739-JPV; C-83-0719-JPV; C-84-1519-JPV filed September 8, 1992 in U.S.D.C.(N.D. Cal)
C-2(1-6)	ORDER, in Nos. C-73-0739-JPV and related cases C-83-0719-JPV filed October 20, 1992 in U.S.D.C. (N.D. Cal).
C-3	ORDER C-83-20374 WAI, 12-17-92
C-4	MEMORANDUM No. 85-2439, Mar. 13, 1987
D-1	CIVIL RIGHTS LAWS (Excerpts)
D-2	Public Law 89-380; THE BACK PAY ACT.

Exhibit(s):

D-3	Correction of Unjustified Personnel Actions in Federal Service (Excerpts).
D-4	Notice of Appeal in No. C-73-0739-JPV; C-83-0719-JPV; C-84-1519-JPV filed November 10, 1992.
D-5	Motion to Alter Judgment Under F.R.C.P. Rule 59(e) filed September 17, 1992 in U.S.D.C. (N.D. Cal).
E-1	Affidavit Supporting Motion for Preliminary Injunction in No. C-73-0739 CBR, August 7, 1973.
E-2	Letter from Asst. U.S. Attorney Paul Fitzpatrick to Joseph Remcho, counsel for plaintiff dated October 18, 1976.
E-3	Letter from defendants to Chief Attorney, VA, May 15, 1973.
E-4	Letter to Gerald T. Cullen from Lynette Rogers, september 20, 1979.
E-5	Notification from Clerk's office in U.S.C.A. (9th Cir.) No. 94-16253, to Lynette Rogers September 12, 1994.
E-6	Points and Authorities in Support of Plaintiff's Motion for Intradistrict Change of Venue, November 8, 1983.
E-7	Declaration of Lynette Rogers in Support of Motion for Intradistrict Change of venue, November 8, 1983.

Exhibit(s):

E-8	Motion for Disqualification of Assigned Judge, the Honorable J.P. Vukasin under U.S.C. §144, filed July 16, 1993 (with attachments).
E-9	TABLE OF CONTENTS from Appellant's Opening Brief filed March 15, 1993 in U.S.C.A. (9th Cir.)
E-10	Civil DOCKET CONTINUATION SHEET, C-83-0719-JPV
E-11	Civil DOCKET CONTINUATION SHEET, C-a83-20374 WAI; C-84-1519-JPV
E-12	JUDGMENT in C-83-20374 WAI filed April 19, 1984.
E-13	Petition for Writ of Mandate (sic) under F.R.A.P. 27(c), February 5, 1992.
E-14	NOTICE OF HEARING, filed October 9, 1992.
E-15	Statement from Interim Health Care, November 14, 1994.
E-16	APPELLEES' MOTION FOR SUMMARY AFFIRMANCE, August 25, 1993.
F-1	Letter to William Hicks from Lynette Rogers, May 11, 1978.
F-2	Letter from William Hicks to Lynette Rogers, May 30, 1978.
F-3	Letter to Bureau of Personnel Investigations from L. Rogers, February 8, 1979.

Exhibit(s):

F-4	Letter to Office of Personnel Management, May 9, 1979 from counsel L.H. Cordell
F-5	Letter to Mrs. Rogers from Office of Personnel Management dated May 22, 1979.
G-1	Memorandum to Chief, Nursing Service from E. Burian, M.D.
G-2	Letter of Proposed Discharge, February 6, 1975
G-3	POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT January 28, 1977.
G-4	Affidavit of Lynette Rogers dated, September 9, 1994
G-5	Federal Times, April 17, 1974, "Ouster of VA Chief Urged."
G-6	Declaration of Lynette Rogers seeking counsel, November 10, 1992.
G-7	Declaration of defendant Paul Duggan, February 13, 1984.
G-8	TABLE OF AUTHORITIES from Extended Brief submitted on April 17, 1985 in Civ. # C-84-1519-JPV.
G-9	38 U.S.C. §4110 Disciplinary Boards.
G-10	TABLE OF CONTENTS IN c-73-0739-JPV, filed July 16, 1992. (Motion No. 1)

Exhibit(s):

G-11	TABLE OF CONTENTS in C-84-1519-JPV, filed July 16, 1992. (Motion No. 3).
G-12	TABLE OF AUTHORITIES from extended brief submitted on April 17, 1985 in Civ. No. C-84-1519-JPV
H-1	Affidavit of Lynette Rogers dated September 9, 1994
H-2	Memorandum to Lynette Rogers, R.N., from Clinical Coordinator, 1/10/73.
H-3	Memorandum to Lynette Rogers, R.N., from Clinical Coordinator, June 29, 1973.
H-4	Memorandum to Mrs. J. Cramer, Coordinator, from L. Rogers, R.N., June 29, 1973.
H-5	Letter to Dr. A.M. Gottlieb, Hospital Director, from F. Waltjen for petitioner, October 10, 1972.
H-6	Memorandum to L. Rogers, R.N., from J. Cramer, R.N., October 26, 1973
H-7	Memorandum to L. Rogers, R.N., from L. Rogers, October 29, 1974.
H-8	Letter to counsel David C. Weinberg from Franklin Johnson, M.D.
H-9	Affidavit of E. McShan, R.N., filed in U.S.D.C., San Francisco, August 27, 1973

Exhibit(s):

H-10	Declaration of Lynette Rogers, dated July 11, 1992, with attachments "c" and "d" only.
I-1	Letter to Lynette Rogers from Robert P. Duggan, OWCP, DOL, April 6, 1977.
I-2	Letter to Lynette Rogers from Richard I. Myers, M.D., May 23, 1977.
I-3	Report of Medical Examination 4/11/68.
I-4	Report of Medical Examination 7/6/71
I-5	Affidavit of E. Piggins, October 21, 1991
I-6	Letter from counsel to defendant, Mr. Wax.
I-7	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CERTIFICATE OF COUNSEL RESPECTING STATUS OF ADMINISTRATIVE HEARING. C-73-0739 CFP
I-8	Letter to Dr. R. Burr from Lynette Rogers, June 26, 1991
I-9	Letter to Lynette Rogers from Dr. R. Burr, June 27, 1991.
I-10	Declaration of Lynette Rogers, July 11, 1992.
I-11	Affidavit of Lynette Rogers, September, 1994.

JUDGMENT

==========

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 94-16253
CT/AG#: CV-73-00739-SBA

FILED
SEP 27 1994
LYNETTE ROGERS

Plaintiff - Appellant

v.

RICHARD L. ROUDEBUSH, et al

Defendant - Appellee

APPEAL FROM the United States District Court for the Northern District of California (San Francisco).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California (San Francisco) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED. Filed and entered August 26, 1994.

A TRUE COPY
ATTEST SEP 19 1994
Clerk of Court by: Deputy Clerk

(mark of a staple shows on upper left-hand corner on the copy)

JUDGMENT

==========

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 92-16938
CT/AG#: CV-73-00739-JPV

FILED NOV 22 1993 (as noted)

LYNETTE ROGERS
Plaintiff - Appellant

v.

RICHARD L. ROUDENBUSH, Administrator, et al,.
Defendant - Appellee

NO. 93-15383
CT/AG#: CV-84-01519-JPV

LYNETTE ROGERS
Plaintiff - Appellant

v.

RICHARD L. ROUDEBUSH, et al,.
Defendant - Appellee

APPEAL FROM the United States District Court for the Northern District of California (San Francisco).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California (San Francisco)

FILED OCT 15 1993

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYNETTE ROGERS,
Plaintiff-Appellant,
vs.
RICHARD L. ROUDENBUSH, et al.,
Defendants-Appellees.

Nos. 92-16938
93-15383
DC# CV-73-00739-JPV
Northern California
(San Francisco)

ORDER

Before: BEEZER, KOZINSKI and KLEINFELD, Circuit Judges

The insubstantiality of consolidated appeal numbers 92-16398 and 93-15383 is manifest from the face of appellant's brief. See United States v. Hooten, 693 F.2d 857 (9th Cir. 1982). Accordingly, appellees' motion for summary affirmance in these consolidated appeals is granted. These dockets are closed.

No motions for reconsideration, rehearing or clarification shall be accepted or entertained in these closed dockets.

MoCal 10/6/93/re
11

FILED August 26, 1994

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYNETTE ROGERS,
Plaintiff-Appellant,
v.
RICHARD L. ROUDEBUSH, et al.,
Defendants-Appellees.

No. 94-16253
DC# CV-73-00739-SBA
Northern California (San Francisco)

Before: WALLACE, Chief Judge, HUG and RYMER, Circuit Judges

ORDER

Appellees' motion for summary affirmance of the district court's June 21, 1994 order denying appellant's motion for post-judgment relief is granted. See Palomo v. Baba, 497 F.2d 959, 960 (9th Cir. 1974) (district court may not act inconsistently with circuit court mandate in ruling on post-judgment motions).

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

AFFIRMED.

Original FILED JUN 21 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
vs.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS, et al.,
Defendants.

No. C 73-0739-SBA

ORDER

Plaintiff Lynette Rogers, a former registered nurse at the Veterans Administration Medical Center in Palo Alto, California, has been litigating her discharge since May of 1973. On February 18, 1977, after defendants filed a motion for summary judgment, the Honorable Cecil F. Poole entered judgment in favor of the defendants. Plaintiff did not appeal the judgment. Rather, in 1992, plaintiff filed a motion pursuant of Federal Rule of Civil Procedure 60(b) seeking relief from the judgment. The honorable J.P. Vukasin denied this motion on September 8, 1992, as well as a motion to disqualify him.

Plaintiff then moved to alter the judgment and to transfer the case to San Jose. On October 20, 1992, Judge Vukasin denied plaintiff's motion for an intradistrict transfer and a Federal Rule of Civil Procedure 59(e) motion to amend the judgment. On November 10, 1992, plaintiff appealed the October 20, 1992 order.

In an Order filed October 15, 1993, regarding plaintiff's consolidated appeals in the above-captioned matter, the Ninth Circuit granted the defendants' motion for summary affirmance. In addition, the Ninth

Circuit ordered "no motions for reconsideration, rehearing or clarification shall be accepted or entertained in these closed dockets." (Federal Defs.' Opp'n to Pl.'s Mot., Exh. A).

Plaintiff's instant motion, characterized as a motion "for final judgment and entry thereof", is no more than a thinly-veiled attempt to circumvent to Ninth Circuit's Order of October 15, 1993. Plaintiff in effect concedes as much by requesting "a revision of Judge J.P. Vukasin's, Order dated September 8, 1992." (Mot. under F.R.C.P. Rule 7(b) and L.R. 220-1 for Final Judgment and Entry Thereof, at 13). The revision requested is a complete reversal of Judge Vukasin's and Judge Poole's rulings and an award to plaintiff of the relief she originally requested in 1973.

Given the Ninth Circuit's explicit Order prohibiting the plaintiff from filing motions for reconsideration in this matter, and the fact that plaintiff's motion for reconsideration has already been ruled upon by Judge Vukasin, plaintiff's instant motion is denied. Accordingly,

IT IS HEREBY ORDERED THAT

1. Plaintiff's motion for "final judgment and entry thereof" is DENIED with prejudice.
2. Pursuant to Local Rule 220-1, the hearing date of June 28, 1994 is VACATED.
3. Plaintiff may not file any further pleadings or requests in the above-captioned matter. Failure to comply with this Order may result in sanctions.

IT IS SO ORDERED

DATED: June 20, 1994

/s/ Saundra B. Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
vs.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS, et al.,
Defendants.

No. C 73-0739 SBA
ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

On June 16, 1994, plaintiff filed a motion for summary judgment. As is discussed more thoroughly in this Court's Order of June 20, 1994, defendants' motion for summary judgment was granted by the Honorable Cecil F. Poole on February 18, 1977. Plaintiff's subsequent motions for reconsideration were denied by the Court. Moreover, the Ninth Circuit has ordered that "no motions for reconsideration, rehearing or clarification shall be accepted or entertained in these closed dockets." (Federal Defs.' Opp'n to Pl.'s Mot., Ex. A). Accordingly,

IT IS HEREBY ORDERED THAT plaintiff's motion for summary judgment is DENIED.

IT IS SO ORDERED
DATED: June 21, 1994

/s/ Saundra Brown Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

[Filed 6/22/94]

ORIGINAL FILED SEP 8 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
RICHARD L. ROUDEBUSH, et. al.,
Defendants.

No. C-73-0739-JPV
C-83-0719-JPV
C-84-1519-JPV

ORDER DENYING PLAINTIFF'S MOTIONS FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b)(4)

BACKGROUND

In 1973, plaintiff filed her original action, C-73-0739-CFP, relating to her demotion and eventual discharge from her position as a Registered Nurse at the Veteans Administration Hospital in Palo alto. Judgment in favor of the defendant was rendered in February of 1977. That judgment was never appealed.[1]

In 1983, plaintiff filed a second action, C-83-0719-JPV, pursuant to the Privacy Act of 1974, 5 U.S.C. § 522a, seeking to compel the alteration of certain purportedly erroneous records stemming from her repeated disability claims. In April of 1985, this Court granted defendants' motion for summary judgment. See Rogers v. United States department of Labor, 607 F.Supp. 697

---

[1]Since the Honorable Cecil F. Poole is no longer a presiding judge in this District Court, the matter was randomly reassigned to the Honorable Marilyn Hall Patel and subsequently referred to this Court. Thus, the new case number is C-73-0739-JPV.

(N.D. Cal 1985). That judgment was never appealed.

In 1983, plaintiff filed a third action, C-83-20374-WAI), seeking to vacate, set aside or enjoin further enforcement of the 1977 judgment against her. In April of 1984, Judge Ingram dismissed the case, granting defendants' motions to dismiss and for summary judgment. That action was later reassigned to this Court as a related case pursuant to Local Rule 205-2, and given a new number, C-84-1519-JPV. Plaintiff then filed a motion for relief from the judgment pursuant to Rule 60(b)(2) and (3) on the grounds of newly discovered evidence that the judgment was obtained by fraud. In July of 1985, this Court denied plaintiff's motion for relief from the judgment in C-84-1519-JPV (formerly C-83-20374-WAI). In March of 1987, the Ninth Circuit affirmed this Court's order denying plaintiff's Rule 60(b) motion for relief from the judgment.

Now, some five years later, plaintiff has filed a motion in each of the three actions seeking relief from the judgments, pursuant to Rule 60(b)(4), on the grounds that the judgments are void.[2] Plaintiff also requests that the motions be heard by a three-judge panel pursuant to Local Rule 200-7.

Plaintiff also filed motions for disqualification of Judge Ware and Judge Vukasin, pursuant to 28 U.S.C. § 144 and Local Rule 205-3, on the grounds of bias and prejudice. Plaintiff's motions are

---

[2]Although these are three separate actions, and correspondingly three separate motions, the matters are inextricably intertwined and shall be treated by this Court, for the purposes of judicial economy, in this one Order, which shall then be filed in all three actions.

completely without merit.

DISCUSSION

1. Three-Judge Panel

Local Rule 200-7 provides "if a party contends that a hearing before a three-judge panel is required, the words "Three-Judge Court" shall be typed below the docket number on the first page of the complaint." In compliance with Local Rule 200-7, plaintiff has requested that her motions be heard by a three-judge court. However, under 28 U.S.C. § 2284(a), a three-judge court is only appropriate when "required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." As plaintiff's actions do not fall under these limited category of cases appropriate for review by a three-judge court, plaintiff's request is improper.

2. Motion for Disqualification

Plaintiff moves for the disqualification of the Honorable James A. Ware from participation in the three-judge court which she requested. However, as her request for a three-judge court is inappropriate, as discussed above, her motion for disqualification of Judge Ware is moot.

Pursuant to 28 U.S.C. § 144 and in accordance with Local Rule 205-3, plaintiff has filed a motion for disqualification of the Honorable J.P. Vukasin, Jr. "because of his prejudice towards plaintiff in these past actions." 28 U.S.C. § 144 provides for the recusal of a judge upon the filing by a party of a "sufficient affidavit that the judge . . . has a personal bias or prejudice either against him or in favor of any adverse party." However, contrary to

plaintiff's implications, merely because a judge is familiar with a party and his legal difficulties through prior judicial hearings, or has found it necessary to cite the party for contempt, does not automatically or inferentially raise the issue of bias. See Barry v. Sigler, 373 F.2d 835 (8th Cir. 1967). "Personal bias" which will disqualify a judge means an attitude of extrajudicial origin; a mere showing of prior judicial exposure to the present parties or questions is insufficient grounds for recusal. See Lyons v. U.S., 325 F.2d 370 (9th Cir 1963) cert. denied 84 S.Ct. 1650 (1964). Thus, an affidavit of bias and prejudice, such as plaintiff's which contains no intimation of personal acquaintance between any party and the judge, and which rests solely on affiant's failure to achieve favorable results in similar proceedings brought before the judge, is insufficient to support recusal. See Curtis v. U.S., 91 F.Supp. 206 (D.N.J. 1950).

Furthermore, it has been held that, to satisfy § 144, the affidavit stating a judge's prejudice myst give fair support to the charge of impartiality by asserting facts with sufficient particularity such that a sane and reasonable mind might fairly infer bias or prejudice. See Wilkes v. U.S., 80 F.2d 285 (9th Cir. 1935). Mere conclusory allegations, such as plaintiff's, are insufficient to support a claim of bias or prejudice such that recusal is required. See Simmons v. U.S., 89 F.2d 591 (5th Cir.) cert. denied 58 S.Ct. 19 (1937). Thus, disqualification of Judge Vukasin under 28 U.S.C. § 144 is inappropriate.

3. Rule 60(b)(4) Motions

Plaintiff has filed a motion in each of the three actions for relief from the judgments on the grounds that the judgments

are void. Rule 60(b)(4), Federal Rules of Civil Procedure, authorizes relief from void judgments. However, in the interest of finality of judgments, the concept of setting aside a judgment on the grounds of voidness is narrowly restricted. Thus, it is uniformly held that a judgment is not void and is therefore not within this rule's ambit merely because it is erroneous, but rather it is void only if the court that rendered it lacked jurisdiction over the subject matter, over the persons, or if the court acted in a manner inconsistent with due process of law. See Watts v. Pinckney, 752 F.2d 406, 409 (9th Cir. 1985) citing 11 Wright and Miller, Federal Practice and Procedure at 198, 200 and cases cited therein.

Upon review of the files in this matter, it is unquestionable that none of these grounds are present.[3] Subject matter jurisdiction existed as plaintiff's complaints alleges violations of federal civil rights law, 42 U.S.C. § 1983, and the federal privacy act, 5 U.S.C. §552a, among other things. The exercise of personal jurisdiction over the parties is not even contested by the plaintiff, but rather, plaintiff's own motion requests that this Court retain personal jurisdiction over the defendants. The parties appearances before this Court also eliminate any argument that personal jurisdiction was lacking. Moreover, plaintiff has failed to demonstrate that the court acted in a manner inconsistent with due process of law. Thus, the judgments are not void within the

---

[3]Plaintiff's moving papers barely touch upon any of these grounds as justification for relief from the judgments. Rather, in her moving papers, plaintiff merits of her case.

meaning of Rule 60(b)(4) as jurisdiction is clear, there is no indication of any abuse of the court's authority and there is no tenable due process argument, since plaintiff had an opportunity to be heard before the ruling by the court. Therefore, plaintiff's motions for relief from the judgment pursuant to Rule 60(b)(4) are meritless.

ORDER

In accordance with the foregoing discussion, IT IS HEREBY ORDERED that:

1. Plaintiff's request for a three-judge court is DENIED.

2. Plaintiff's motion for disqualification of Judge Ware is DENIED as moot.

3. Plaintiff's motion for disqualification of Judge Vukasin is DENIED.

4. Plaintiff's motion, pursuant to Rule 60(b)(4), for relief from the judgment in C-73-0739-JPV is DENIED.

5. Plaintiff's motion, pursuant to Rule 60(b)(4), for relief from the judgment in C-83-0719-JPV is DENIED.

6. Plaintiff's motion pursuant to Rule 60(b)(4), for relief from the judgment in C-84-1519-JPV is DENIED.

DATED: SEP - 8 1992

_____

J. P. VUKASIN, JR.
UNITED STATES DISTRICT JUDGE

ORIGINAL FILED OCT 20 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
RICHARD L. ROUDEBUSH, et al.,
Defendants.

No. C-73-0739-JPV
and related cases
C-83-0719-JPV
C-84-1519-JPV
ORDER DENYING MOTION FOR INTRADISTRICT TRANSFER AND MOTION TO AMEND JUDGMENT

INTRODUCTION

Plaintiff Rogers, proceeding pro se, filed a Motion for Intradistrict Transfer and a Motion to Amend Judgment under 59(e) with this Court on September 17, 1992. After due consideration, this court DENIES both Motions.

BACKGROUND

In 1973, plaintiff filed her original action, C-73-0739-CFP, based upon her demotion and eventual discharge from her position as a Registered Nurse at the Veterans Administration Hospital in Palo Alto. Judgment in favor of the defendant was rendered in February, 1977 by the Honorable Cecil F. Poole, a former member of this District's bench. In August, 1992, the matter was randomly reassigned to the Honorable Marilyn Hall Patel and subsequently referred to this court as a related case pursuant to Local rule 205-2.

In 1983, the plaintiff filed a second action, C-83-0719-JPV, under the Privacy act of 1974, 5 U.S.C. § 552a seeking to compel the alteration of certain allegedly erroneous records stemming from her repeated

disability claims. In April, 1985, this Court granted defendant's motion for summary judgment.

Plaintiff filed a third action in 1983, C-83-20374-WAI, before the Honorable William A. Ingram. This third action sought to vacate the 1977 judgment entered against her by Judge Poole in C-73-0739-CFP. In April, 1984, Judge Ingram granted defendant's motion to dismiss and motion for summary judgment. That action was later reassigned to this Court as a related case pursuant to Local Rule 205-2 and given a new number, C-84-1519-JPV. Plaintiff then filed a motion for relief from the judgment pursuant to Rule 60(b)(2) and (3) on the grounds of newly discovered evidence. In March, 1987, this Court denied the motion; that denial was subsequently upheld in an appeal to the Ninth circuit in 1987.

In 1992, Plaintiff brought a motion under 60(b)(4) seeking relief from judgment for all of the aforementioned actions. On September 8, 1992, this Court denied the motions. Plaintiff now requests an intradistrict transfer for No. C-73-0739-JPV and No. 83-0719-JPV to the United States District Court in San Jose[1] and has filed a motion to vacate this Court's order of september 8, 1992 under Federal Rule of Civil Procedure 59(e).

DISCUSSION

I. Motion for Intradistrict Transfer

28 U.S.C. § 1404(a) provides "[f]or the convenience of parties and witness, in

---

[1]Plaintiff's moving papers appear to assume that No. 84-1519-JPV has somehow retained its former case number No. 83-20374-WAI and venue in San Jose. However, court records indicate that this case has been retained by this Court in San Francisco.

the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Delay in bringing the motion to transfer is sufficient to justify denial of the motion. Moore v. Telfon Communications Corp., 589 F.2d 959 (9th Cir. 1978). In Moore, the Ninth Circuit held that where a plaintiff brought a motion to transfer six years after suit had commenced but before trial, complications raised by such delay outweighed the plaintiff's desire to change forums. A motion brought more than five years after judgment has been entered prsents a far more compelling case for denial. Accordingly, this Court finds that the motion to transfer should be denied.

Plaintiff nonetheless argues that an intradistrict transfer is proper under Local Rule 105-2.[2] Local Rule 105-2(b) provides

---

[2]Local Rule 105-2 provides:

(a) General Venue: All actions and proceedings, both civil and criminal, for which venue lies in this district shall be commenced in San Francisco except as hereafter provided.

(b) Venue in San Jose: All criminal actions and proceedings involving offenses alleged to have been committed in the counties of Santa Clara, Santa Cruz, San Benito or Moneterey, and all civil actions and proceedings for which venue lies in those counties shall be commenced in San Jose.

(c) Transfer of Actions and Proceedings: Whenever in any civil or criminal action or proceeding a judge finds, upon his own motion or the motion of any party, that an action has not been commenced in the proper court within this district in accordance with this Rule, or that the

vacate this Court's order entered on September 8, 1992 which denied plaintiff relief from judgment under 60(b)(4) regarding the three aforementioned actions.[4] Plaintiff has raised several arguments which will be addressed in turn.

First, plaintiff contends that this Court's order "was arrived by procedurally defective Federal and Local Rules of Civil Procedure, thereby violating plaintiff's right to due process of law." Plaintiff fails to state, and this Court therefore cannot consider, any procedural defects in those rules. Therefore, this Court finds that its order will not be amended or vacated on this ground.

Second, plaintiff argues that the judgment is inconsistent with the preponderance of relevant evidence, failed to address State law, and was therefore an abuse of discretion. This Court is unpersuaded that the evidence contradicts this Court's order or that any State law issues remain unaddressed. Relief therefore cannot be grante on these grounds.

Third, this Court disagrees that this Court's order was in conflict with Judge Ingram's ability to review his own order. Both the federal and local rules provide for the transfer of cases, whereby courts are permitted to review decisions entered in other districts or divisions. 28 U.S.C. §§ 1404, 1406; Local Rule 105-2.

Fourth, contrary to the great weight of authority, plaintiff contends that this Court is somehow subject to the U.S. District Court in San Jose after this Court accepted jurisdiction of Judge Ingram's case. It is well settled that any transfer

---

[4]Cases C-73-0739-JPV, C-83-0719-JPV, and C-84-1519-JPV.

vacate this Court's order entered on September 8, 1992 which denied plaintiff relief from judgment under 60(b)(4) regarding the three aforementioned actions.[4] Plaintiff has raised several arguments which will be addressed in turn.

First, plaintiff contends that this Court's order "was arrived by procedurally defective Federal and Local Rules of Civil Procedure, thereby violating plaintiff's right to due process of law." Plaintiff fails to state, and this Court therefore cannot consider, any procedural defects in those rules. Therefore, this Court finds that its order will not be amended or vacated on this ground.

Second, plaintiff argues that the judgment is inconsistent with the preponderance of relevant evidence, failed to address State law, and was therefore an abuse of discretion. This Court is unpersuaded that the evidence contradicts this Court's order or that any State law issues remain unaddressed. Relief therefore cannot be grante on these grounds.

Third, this Court disagrees that this Court's order was in conflict with Judge Ingram's ability to review his own order. Both the federal and local rules provide for the transfer of cases, whereby courts are permitted to review decisions entered in other districts or divisions. 28 U.S.C. §§ 1404, 1406; Local Rule 105-2.
Fourth, contrary to the great weight of authority, plaintiff contends that this Court is somehow subject to the U.S. District Court in San Jose after this Court accepted jurisdiction of Judge Ingram's case. It is well settled that any transfer

---

[4]Cases C-73-0739-JPV, C-83-0719-JPV, and C-84-1519-JPV.

is a complete transfer; a transferor court does not retain jurisdiction over any aspect of the proceeding. Wright, Miller & Cooper, *Federal Practice and Procedure* § 3846.

Finally, plaintiff argues that she was denied a hearing regarding the case re-assignments. Local Rule 205-2(a) provides that any party who believes that related actions exist must file a Notice of Related Case. After such filing, any party is permitted ten days to file a counterstatement either to support or oppose the Notice. Local Rule 205-2(b). Plaintiff filed a Notice of Related Case on August 20, 1992. No counterstatement was filed during the ten-day period after the Notice was filed. Therefore, by failing to avail herself of the opportunity to be heard, plaintiff has waived that right.

Accordingly, this Court finds the 59(e) motion entirely without merit and therefore denies the motion.

ORDER

In accordance with the foregoing discussion, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion for Intradistrict transfer is DENIED.

2. Plaintiff's Motion to Alter or Amend Judgment under Federal Rule of Civil Procedure 59(e) is DENIED.

DATED: OCT 20 1992

/s/ J.P. Vukasin, Jr.
J.P. VUKASIN, JR.
UNITED STATES DISTRICT JUDGE

FILED DEC 18 1992
Richard W. Wieking, Clerk
U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
RICHARD L. ROUDEBUSH, VETERANS AFFIARS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS, et al.,
Defendants.

C 83-20374
Order Denying Motion for Relief under Fed. R. Civ. P. 60(b)(4)

Plaintiff's Motion for Relief from this court's judgment of dismissal in the above-captioned action came under submission for decision without oral argument pursuant to Local Rule 220-1. Plaintiff's Motion for Relief is DENIED, as plaintiff has failed to substantiate her argument that the court's judgment of dismissal is "null and void under F.R.C.P. Rule 60(b)(4)."
(Motion for Relief at 1).
DATED: 12 17 92

/s/ WAI
WILLIAM A. INGRAM
United States District Judge

[C-37]

NOT FOR PUBLICATION

FILED: MAR 13 1987

Stamped: CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYNETTE ROGERS,
Plaintiff-Appellant,
vs.
VETERANS ADMINISTRATION, RICHARD L. ROUDEBUSH, Director, Veterans Administration, and JOHN D. CHASE, M.D., Chief Medical Director, Veterans Administration,
Defendants-Appellees.

No. 85-2439
DC# C 84-1519-JPV
MEMORANDUM*

Appeal from the United States District Court for the Northern District of California
John P. Vukasin, District Judge, Presiding
Argued and Submitted January 12, 1987
San Francisco, California

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

Before: CHAMBERS, NELSON and NOONAN, Circuit Judges

On February 18, 1977. summary judgment was granted against Lynette Rogers, in this suit that she brought against the Veterans Administration. On May 23, 1984, the district court dismissed her Rule 60(b) motion to vacate this judgment. On July 10,

1984, a second district court judge denied a second Rule 60(b) motion to vacate the 1984 judgment.

Lynette Rogers contends that the original judgment was obtained by misrepresentation and fraud on the court. We affirm the judgment of the district court that she has not sustained her burden of showing misrepresentation and fraud.

The district court granted the defendant's motion for attorney's fees under Rule 11 from Rogers' attorney, Albin E. Danell, on the ground that he had made the second Rule 60(b) motion without a reasonable belief that it was well-founded in fact or law. Danell appealed from these sanctions but failed to prosecute his appeal. The appeal is hereby dismissed.

Rogers v. Department of Labor, 607 F.Supp. 697 (N.D. Cal. 1985), a decision of the district court referred to in Roger's brief, was never appealed and is not before this court.

The judgment in 84-2439 is affirmed. The appeal in 85-2440 is dismissed.

CIVIL RIGHTS

a. California's Civil Rights Act
Cal.Civ.Code §51 (West Supp. 1978)

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the free and equal accomodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Source: Life Ins. Co. of North America v. Reichantal 591 F.2d. 499, 504 (9th Cir. 1979) n.12.

---

b. 28 U.S.C.A. §1343

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by an act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;

"(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

"(3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

Source: Agnew v. City of Compton, 239 F.2d. 226, 227 (9th Cir. 1956) n.2.

c. Title 42 U.S.C. §1988 provides, in relevant part:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title 'CIVIL RIGHTS' and of Title "CRIMES' for the protection of all persons in the United States in their civil rithts, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the state wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause...,"

Source: Wilson v. Garcia, 105 S.Ct. 1938, 1942 (1985) n.13.

---

d. AMENDMENT XIV [1868]:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Source: Black's Law Dictionary, 6th Ed. (1990), West Publishing Co.

---

e. 42 U.S.C.A. §1983:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit inequity, or other proper proceeding for redress."
Source: Agnew v. Compton, Id. at 230, n.7.

f. 42 U.S.C.A. §1985(2)(3):

"(2)*** if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing the right of any person, or class of persons, to the equal protection of the laws;
"(3)***in any case of conspiracy set forth in this Section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having or exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against one or more of the conspirators."
Source: Agnew v. City of Compton, Supra at 232 n.14.

g. 42 U.S.C.A. §1985(1):

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place where his duties of an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties.....

Source: 42 U.S.C.A. §1985 CIVIL RIGHTS, Ch.21.

---

h. 42 U.S.C.A. §1988: ATTORNEYS FEES

In any action or proceeding to enforce a provision of Sections 1981, 1982, 1983, 1985, and 1986 of this Title ??? Title IX of Public Law 92-318, or Title VI of the Civil Righs Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Source: Seaway Drive-In, Inc. v. T.P. of Clay, 791 F.2d, 447, 450 (6th Cir. 1986).

---

i. DISCRIMINATION PROHIBITED--Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied The benefits of, or be subjected to

discrimination under any program or activity receiving Federal financial assistance." Therefore, the Professional Nurse Traineeship Program of the Nurse Training act of 1964, like every program or activity receiving Federal assistance from the Department of Health, Education and Welfare, must be operated in compliance with this law.

Source: PROFESSIONAL NURSE TRAINEESHIP PROGRAM, PUBLIC HEALTH SERVICE PUBLICATION NO. 1154-1.

Public Law 89-380
March 30, 1966 AN ACT
[H.R. 1647] To provide for the payment of certain amounts and restoration of employment benefits to certain Government officers and employees improperly deprived thereof, and for other purposes.

Back Pay Act of 1966

Be it enacted by the Senate and House of Representatives of the *United States of America in Congress* assembled, That this Act may be cited as the "Back Pay Act of 1966".

SEC.2. For the purposes of this Act—

(1) "agency" means—

(A) each executive department of the Government of the United States;

(B) each agency or independent establishment in the executive branch of such Government;

(C) each corporation owned or controlled by such Goverment;

(D) the administrative Office of the United States Courts;

(E) the Library of Congress;

(F) the General Accounting Office;

(G) the Government Printing Office; and

(H) the municipal government of the District of Columbia.

SEC.3. *Unjustified personnel action, benefit principles.*

Each civilian officer or Unjustified employee of an agency who, on the basis of an administrative determination or a timely benefit appeal, is found, on or after the date of enactment of this Act, by appropriate authority under applicable law or regulation to have

under gone an unjustified or unwarranted personnel action taken prior to, on, or after the date of enactment of this Act, which has resulted in the withdrawal or reduction of all or any part of the pay, allowances, or differentials of such officer or employee—

Pay

(1) shall be entitled, upon correction of such personnel action, to receive for the period for which such personnel action was in effect an amount commensurate with the amount of all or any part of the pay, allowances, or differentials, as applicable, which such officer or employee normally would have earned during such period if such personnel action had not occurred, less any amounts earned by him through other employment during such period; and

Leave accumulation.

(2) for all purposes, shall be held and considered to have rendered service for agency during such period, except that such officer or employee shall not be credited, by reason of the enactment of this Act, leave in an amount which would cause any amount of leave to his credit to exceed any maximum amount of such leave authorized for such officer or employee by law or regulation.

Regulations; nonapplicability.

SEC.4. The United States Civil Service Commission shall prescribe regulations to carry out provisions of thie Act. Such regulations shall not be applicable with respect to the Tennessee Valley Authority and its officers and employees.

Repeals.

SEC.5. There are hereby repealed

(1) section 6(b) of the Act of August 24, 1912 as amended (5 U.S.C. 652(b); and

(2) that part of the third proviso of the first section of the Act of August 26, 1950 (5 U.S.C.22-1), which reads: ", and if so reinstated or restored shall be allowed compensation for all or any part of the period of such suspension or termination in an amount not to exceed the difference between the amount such person would normally have earned during the period of such sus-pension or termination, at the rate he was receiving on the date of suspen-sion or termination, as appropriate, and the interim net earnings of such person".

Approved March 30, 1966.

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

Lynette Rogers, Plaintiff pro se
624 Cornelia Court
Mountain View, CA 94040
Telephone: 9415) 967-5426
ORIGINAL FILED NOV 10 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS
Plaintiff,
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS, et al.
Defendants.

NOTICE OF APPEAL

No. C-73-0739 JPV
No. C-83-0719 JPV
No. C-84-1519 JPV

NOTICE OF APPEAL TO THE NINTH CIRCUIT COURT OF APPEALS

To The Clerk of the above-titled Court:

Notice is hereby given that plaintiff, pro se, appeals to the Court of the Ninth circuit Court of Appeals, from the ORDER DENYING MOTION FOR INTRADISTRICT TRANSFER AND MOTION TO AMEND JUDGMENT entered on October 20, 1992.
Dated: November 10, 1992.

/s/ Lynette Rogers
Lynette Rogers, Plaintiff, *pro se*
624 Cornelia Court
Mountain View, CA 94040

Lynette Rogers, Plaintiff pro se
624 Cornelia Court
Mountain View, CA 94040
Telephone: 9415) 967-5426
ORIGINAL FILED SEP 17 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS
Plaintiff,
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS, et al.
Defendants.

MOTION TO ALTER JUDGMENT UNDER F.R.C.P. RULE 59(e).

No. C-73-0739 JPV
No. C-83-0719 JPV
No. C-84-1519 JPV

Plaintiff petitions the court to alter the judgments entered on September 8, 1992, by the Honorable J.P. Vukasin in the above-captioned cases for the following reasons:

1. This judgment was arrived by procedurally defective Federal and Local Rules of Civil Procedure, thereby violating plaintiff's right to due process of law.
2. This judgment is inconsistent with the preponderance of relevant evidence, nor does it address State law through pendent jurisdiction, and therefore, was arbitrary and capricious and an abuse of discretion.
3. This judgment is in conflict with the authority of the Honorable Judge W.A. Ingram to make his own decision as to whether his judgment was void under Rule 60(b)(4) in civil case No. 83-20374 WAI, in the San Jose district venue.
4. This judgment was made on C84-1519 JPV which was not in direct contention before the Court, but rather, subject to the

Court's mandate under C83-20374 WAI.

Plaintiff alleges that she was not informed that plaintiff's case No. 73-0739 MHP was transferred to Judge J.P. Vukasin until after plaintiff received the Court's order of denial in the above-captioned cases. Although the last REASSIGNMENT ORDER between the transferring Judge, Marilyn Hall Patel, and the accepting Judge, J.P. Vukasin, was dated August 31, 1992, plaintiff only received a copy of this ORDER ten (10) days later; specifically on september 10, 1992. Therefore, plaintiff was denied requesting a hearing on her motions.

Plaintiff respectfully petitions the Court for an order to transfer two of these motions in No. 73-0739 JPV, and No. C-83-0719 JPV, from the San Francisco district to the San Jose district under Local Rule 205-4 in the interests of justice and because this is the venue for all actions under L.r. 105-2(c).

Dated: September 17, 1992.

Respectfully submitted ,
/s/ Lynette Rogers
LYNETTE ROGERS,
Plaintiff, pro se

SPAETH, BLASE, VALENTINE & KLEIN
A Professional Corporation
400 Channing Avenue
P.O. Box 1320
Palo Alto, California 94302

(415) 327-6700
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
vs.
ADMINISTRATOR OF VETERANS ADMINISTRATION HOSPITAL; et al,
Defendants.

No. C 73-0739 CBR
AFFIDAVIT SUPPORTING MOTION FOR PRELIMINARY INJUNCTION

STATE OF CALIORNIA)
) ss.
COUNTY OF SANTA CLARA)

LYNETTE ROGERS, being first duly sworn upon her oath deposes and says:

1. I am the plaintiff in the above-entitled action.

2. This action seeks relief from adverse employment action taken on the basis of the Proficiency Rating SYstem at the Veterans Administration Hospital in Palo Alto. Since the action has been filed, I have been subjected to further adverse employment action also based on the Proficiency Rating System.

3. On April 17, 1973, I received written notice from Esther McShan, Head Nurse and Junne Cramer, Clinical Coordinator that my periodic step

increase in salary was being withheld because of the rating I received under the Proficiency Rating System.

4. On august 3, 1973, I received oral notice from Esther McShan that a proficiency rating of thirty-one (31) had been given to me. Under the Proficiency Rating System, such a rating is unsatisfactory and gives cause for referral to a Disciplinary Board or a Professional Standards Board which may terminate my employment.

5. It is my information and belief that the above adverse actions have been taken against me as a reprisal for the filing of the law suit herein, and in further violation of my rights to equal protection of the laws and due process of law.

6. It is my further information and belief that unless restrained from taking any adverse employment action based on the Proficiency Rating System, pending the trial of this matter, that I will be terminated, thereby suffering grave and irreparable damage.

I declare under penalty that the foregoing is true and correct to the best of my knowledge and ability, and if called to testify, I could testify competently thereto.

Executed on August 7, 1973 at Palo Alto, California.

"/s/ Lynette Rogers"

STATE OF CALIFORNIA,)
County of SANTA CLARA) ss.

On this 7th day of August in the year one thousand nine hundred and 73 before me, Donna T. Derylo, a Notary

Public, State of California, duly commissioned and sworn, personally appeared LYNETTE ROGERS known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of SANTA CLARA the day and year in this certificate first above written.

"/s/Donna T. Derylo"
Notary Public, State of California
My Commission Expires November 16, 1995

(SEAL)
DONNA T. DERYLO
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My Commission Expires November 16, 1995

October 18, 1976
PJF:em

Joseph Remcho, Esq.
ROSEN, REMCHO & HENDERSON
155 Montgomery Street, 15th Floor
San Francisco, California 94104

Re: Lynette Rogers v. V.A., et al.
Civil No. C-73-0739-CBR (N.D. Calif.)

Dear Mr. Remcho:

With regard to your letter of October 6, 1976, I have reviewed your proposed First Amended Complaint received in this office on September 24, 1976.

I agree with you that an amended complaint which would simplify the issues should be filed. However, this proposed amended complaint purports to sue the Federal defendants Mr. Roudebush and Dr. Chase as individuals, as well as in their official capacities. I will not stipulate to filing an amended complaint which sues the Federal defendants as individuals. If you wish to proceed against the defendants as individuals, you should file your motion for leave to file an amended complaint.

If you are willing to proceed against the Federal defendants in their official capacities only, my views remain the same as I stated to you earlier, i.e., I would sign a stipulation allowing you to file the amended complaint after I have had an opportunity to review the proposed complaint.

Very truly yours,

JAMES L. BROWNING, JR.
United States Attorney

PAUL J. FITZPATRICK
Assistant United States Attorney

cc: Raymond P. Neal
District Counsel
Veterans Administration
Office of District Counsel
211 Main Street
San Francisco, California 94105

Veterans Administration Hospital
3801 Miranda Avenue
Palo Alto, California 4304
May 15 1973
In Reply Refer to: 640/135

Chief Attorney (27)
Veterans Administration Regional Office
49 Fourth Street
San francisco, California 94103

SUBJ: Civil Action C73 0739 CBR - Mrs. Lynette Rogers

The undersigned request that we be afforded counsel and representation in the above case by the United States Attorney. All of our actions relating to Mrs. Rogers were in the course of the performance of our official duties.

/s/ A.M. Gottlieb
A. M. GOTTLIEB, M.D.

/s/Clara Cutler
CLARA CUTLER, R.N

/s/Franklin Johnson MD
FRANKLIN JOHNSON, M.D.

/s/ Carl P. Hollenhorst
CARL P. HOLLENHORST

/s/ Helen F. Hennessy
HELEN F. HENNESSY, R.N.

/s/ Helen Johnson
HELEN JOHNSON, R.N.

/s/Junne Cramer
JUNNE CRAMER, R.N.

/s/Doris von Morpurgo
DORIS VON MORPURGO, R.N.

/s/ Ernst Burian MD
ERNST BURIAN, M.D.

/s/Angelena Frantz, RN
ANGELENA FRANTZ, R.N.

/s/Barbara Olsen R.N.
BARBARA OLSON, R.N.
Barbara Olsen, R.N.

624 Cornelia Court
Mountain View, CA 94040
September 20, 1979

Mr. Gerald T. Cullen
Assistant Deputy Commissioner
Office of Employees' Workers Compensation Program
450 Golden Gate Avenue
San Francisco, CA 94102

Ref. File No: A-13-422643
Date of Injury: May 10, 1974

Dear Sir:

I am looking forward to a satisfactory resolution of my work-related claim within the purview of the respective agencies involved for the following reasons:

1. A final decision is long over-due on these cumulative proglems since it is now almost six years from the date of injury.
2. I am anxious to seek full-time, permanent employment with clearance of my professional record since I would be unprejudicially accepted, especially since I am now in excellent health; and
3. With full-time permanent employment I can become eligible for primary health insurance since I am presently without any coverage of my own.

Thank you for your consideration in this matter.

Respectfully yours,
/s/ Lynette Rogers

Mrs. Lynette Rogers

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
121 Spear Street, P.O. Box 193939
San Francisco, CA 94105-3939

September 12, 1994

TO: Lynette Rogers

FROM: Clerk's Office, U. S. Court of Appeals for the Ninth Circuit
By: Donna Gilmour, Deputy Clerk

RE: USCA No. 94-16253 Rogers v. Roudebush

We are in receipt of your recent transmittal to this office. However, pursuant to this court's order of August 26, 1994 no motions are to be accepted in this case.

The material that you have submitted is being returned to you along with a copy of this letter.

ALBIN E. DANELL
A Professional Corporation
111 W. St. John St., Suite 600
San Jose, CA 95113
Telephone (408) 287-3317
Attorney for Plaintiff

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF LABOR, et al.,
Defendant.

No. C-83-0719-JPV
POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR INTRADISTRICT CHANGE OF VENUE

I.

FACTS

This action is brought under the Privacy Act of 1974, 5 U.S.C. § 552a, for damages plaintiff has suffered by defendant's failure to accurately maintain the record of her two disability claims.

At the last Status Conference on October 7, 1983, the Hon. William W. Schwarzer, Judge of the Federal District Court excused plaintiff from pursuing any further administrative remedies under the Act. He further ordered Plaintiff to submit a brief setting forth the nature of her claim for damages, the statutory basis for a tort claim, the effect of res judicata on this action, and the propriety of any amendment to the original complaint.

Then on October 17, 1983, the case

was reassigned to the Hon. John P. Vukasin, Jr., by Chief Judge Robert Peckham. The first appearance before Judge Vukasin is the next status conference, currently set for December 16, 1983.

Plaintiff herein seeks an intradistrict change of venue from the San Francisco Division of this court to its San Jose Division. The motion is being brought pursuant to 28 U.S.C. § 1404(b) on the grounds that the change of venue is in the interests of justice and convenience of the witnesses.

II

STATUTORY AUTHORITY FOR CHANGE OF VENUE

A change of venue may be ordered pursuant to 28 U.S.C. § 1404 as follows:

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district...(Emphasis added).

In addition, the local rules of the above entitled court indicate in Rule 105-2(c) that:

> Whenever in any civil or criminal action or proceeding a judge finds, upon his own motion or the motion of any party, that the convenience of parties and witnesses and the interests of justice will be served by transferring the same to a different venue within the

district, including San Jose, Oakland or Eureka, he may order such transfer.

III

ARGUMENT

Plaintiff has found no cases in this district where an intradistrict change of venue has been sought under § 1404(b). However, the United States District Court for the Western District of Missouri considered such a request in Johnson v. Burlington-Northern, Inc., 480 F. Supp. 259 (1979).

The Johnson court ruled in favor of a plaintiff's motion for intradistrict change of venue when such a change was more convenient for counsel and the change did not inconvenience the court. The court recognized that under § 1404(a), "[t]he elements to be considered in exercising discretion to transfer to another district are defined in a manner which generally precludes considering the convenience of Court and counsel." Nevertheless, at the same time, the court held that "[d]iscretionary transfers within a district, however, are subject to fewer guidelines. 28 U.S.C. §1404(b)."

In the present case, Plaintiff's counsel is located at San Jose. It would be much more convenient for plaintiff's counsel and certainly less financially burdensome for Plaintiff, for this action to be conducted in San Jose.

In addition, such a change would impose little inconvenience upon the court for the case was only reassigned to the Hon. John P. Vukasin, Jr., by order of Chief Judge Robert Peckham, on October 17, 1983. Judge Vukasin has not yet had the opportunity to preside over any proceedings in this case. It

would then probably be of little inconvenience to reassign the case to San Jose at this time.

Perhaps more relevant for the court's consideration is the fact that the convenience of the witnesses and the interests of justice support the requested change of venue to San Jose. Plaintiff's expected witnesses all reside in Santa Clara County, wherein transfer is sought. They are all elderly and would find travel to San Francisco most difficult to arrange. On the other hand, Plaintiff is easily able to provide them transportation to San Jose should the court order the transfer requested herein.

IV.

CONCLUSION

In the exercise of its discretion, for the convenience of Plaintiff's witnesses, and in the interests of justice, the court is urged to grant Plaintiff's Motion for Intradistrict Change of Venue from the court's San Francisco Division to the San Jose Division.

Dated: November 8, 1983.

Respectively submitted,

/s/ Albin E. Danell

ALBIN E. DANELL
Attorney for Plaintiff

[Filed 11/8/83]

ALBIN E. DANELL
A Professional Corporation
111 W. St. John St., Suite 600
San Jose, CA 95113
Telephone (408) 287-3317
Attorney for Plaintiff

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF LABOR, et al.,
Defendant.

No. C-83-0719-JPV
DECLARATION OF LYNETTE ROGERS IN SUPPORT OF MOTION FOR INTRADISTRICT CHANGE OF VENUE

I, LYNETTE ROGERS, declare:

1. I am the Plaintiff in the above-entitled action.

2. This action was commenced by complaint filed in the United States District Court for the Northern District of California on February 15, 1983, and service of a copy of the summons and complaint was made on defendant at 450 Golden Gate Avenue, in the County of San Francisco, State of California, on February 18, 1983 and March 17, 1983. Defendant's answer to Plaintiff's complaint was filed herein on May 16, 1983, and a copy thereof was served on Plaintiff's attorney on May 16, 1983.

3. This is an action for damages under the Federal Privacy Act of 1974.

4. This action arose in the County of Santa Clara, California wherein transfer is sought.

5. I propose to call in prosecuting this action the following witnesses.

NAME	Dorothy Fenster
ADDRESS	1735 Lawrence Rd., #110 Santa Clara, CA
OCCUPATION	Retired

NAME	Lois Henderson
ADDRESS	1347 Winona Dr. San Jose, CA
OCCUPATION	Retired

NAME	Ruby White
ADDRESS	125 N. Mary Ave. Sunnyvale, CA
OCCUPATION	Retired

NAME	Frank Rogers
ADDRESS	624 Cornelia Ct. Mountain View, CA
OCCUPATION	Retired

NAME	Dr. Robert Winter
ADDRESS	3033 Moorpark Ave., #25 San Jose, CA
OCCUPATION	Psychologist

6. I expect to prove by the above witnesses the following facts: While employed as a Registered Nurse at the Veterans' Administration Hospital at Palo Alto, California, I filed two separate disability claims with the Department of Labor under the Federal Employees Compensation Act (FECA). These claims resulted from cumulative effects of stress incurred during my employment at the Veterans' Administration. Over the past 8 1/2 years the Department of Labor has failed to make a final decision on my disability claims. In doing so the Department has repeatedly, intentionally, and willfully relied

upon false and inaccurate information. This has been brought to the attention of the Department of Labor, which has been supplied with the correct information, but has nevertheless refused to correct my records.

7. I believe that I cannot safely proceed to trial of this action without the testimony of all of the above witnesses, and I have been so advised by ALBIN E. DANELL, my counsel.

8. The testimony of the above witnesses cannot be adequately presented by deposition because there is expected to be conflict in the evidence as to the key and material matters, and the actual appearance of the witnesses on the stand will be a crucial factor in the jury's evaluation of the witnesses' testimony and credibility.

9. The interests of justice and the convenience of the above witnesses require that the trial be held in Santa Clara County, State of California, in which the United States District Court for the Northern District of California, San Jose Division is located and in which the above witnesses reside.

10. That the convenience of witnesses and the ends of justice will be promoted by the change of venue sought herein is further shown by the following facts:

a. The above witnesses, except for Dr. Winters, are all elderly and/or without transportation. It would be extremely difficult for me to obtain means to transport them to San Francisco for trial but I would be able to have them driven to San Jose, as it is much closer to their homes.

b. If compelled to go to trial in the San Francisco Division of the

court, I would be forced to prosecute this action with depositions, and will likely be denied the benefit of the personal appearance of my witnesses before the trier of facts.

c. My attorney's office is in San Jose. It is financially burdensome for me to prosecute this case from the court's San Francisco Division. This burden will be significantly reduced by the action being conducted out of the San Jose Division of the court.

d. There would be little or no inconvenience imposed on the court by this change of venue as the case was reassigned to Judge John P. Vukasin, Jr. by Chief Judge Robert Peckham, on October 17, 1983. Judge Vukasin has not yet had the opportunity to preside over any of the proceedings in the action.

I declare under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on November 8, 1983, at San Jose, California.

/s/ Lynette Rogers
LYNETTE ROGERS, Plaintiff

[Filed 11/8/83]

Lynette Rogers, Plaintiff prose
624 Cornelia court
Mountain View, CA 94040
Telephone: (415) 967-5426

ORIGINAL FILED JUL 16 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS, et al., RALPH M. HARTMAN, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAM; GERALD T. CULLEN, DEPUTY COMMISSIONER, et al.
Defendants.

MOTION FOR DISQUALIFICATION OF ASSIGNED JUDGE, THE HONORABLE J.P. VUKASIN, JR., UNDER U.S.C. § 144, AND LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, RULE 205-2.

CIVIL NO. C-83-0719 JPV
and
Civil No. C-84-1519 JPV

I, LYNETTE ROGERS, declare:

I am the plaintiff in the above-captioned cases and I have personal knowledge of the facts stated herein. I am requesting that the Honorable Judge J.P. Vukasin, Jr. be disqualified from presiding as a member of a three judge court which plaintiff requesting in her three motions for relief from judgment an order under Rule 60(b)(4). Plaintiff alleges that her reasons for requesting the disqualification of the Honorable Judge J.P. Vukasin, Jr. was because of his prejudice toward plaintiff in these past actions. This prejudice was manifested by Judge Vukasin's unfair method of handling plaintiff's civil actions filed

in Federal district Court, under previous experienced judges; the Honorable W.A. Ingram, and W.V. Schwarzer, but which were later transferred to Judge Vukasin, a newly appointed Judge. They were dismissed expeditiously under the following circumstances:

1. On February 15, 1984, the government, under joseph P. Russoniello, United States Attorney, submitted a letter dated February 15, 1984, to James Waggoner, c/o Judge William a. Ingram. In this letter, the government filed a NOTICE OF RELATED case in C-83-20374 WAI Lynette Rogers v. Veterans Administration, et al., and requested that this case be related to No. C-83-0719 JPV, Rogers v. Department of Labor, et al. (Exhibit 1.)
2. On March 26, 1984, Judge Vukasin signed a Related Case Order which states that: "I advise[d] the Assignment Committee that these cases are related within the meaning of Local Rule 205-2 or Local rule 320-1." (Exhibit 2.)
3. On the basis of this affirmation by Judge Vukasin, a reassignment order was signed by the Honorable Robert Peckham, Chief Judge, and the case number C-83-20374 WAI was vacated and assigned a new number; C-84-1519 JPV. (Exhibit 3.)
4. However, on January 17, 1984, at the hearing before the court, Judge Vukasin granted Summary Judgment in favor of the government in case number C-83-0719 JPV. (Exhibit 4, Reporter's Transcript pp. 109, Tuesday, January 17,. 1984.)

Specifically, Judge Vukasin, speaking for the court states:

> The Court: Alright, I'm going to grant the defendants; motion. You want a dismissal or a summary judgment? I suspect we might as well make it a summary judgment

and make it final. [Trans. p. 8, Ln. 8-11] Id. (Emphasis added).

Therefore, Judge J.P. Vukasin's advice to the ". . . Assignment Committee that these cases are related within the meaning of Local Rule 205-2 or Local Rule 320-1," was done knowingly in that Judge Vukasin previously granted summary judgment to the government, but nevertheless permitted plaintiff's case, No. C-83-20374 WAI to be transferred to his court under misrepresentation of the Local Rules of the United States District Court for the Northern district of California.

In Civil case no. C-84-1519 JPV, plaintiff alleges that Judge Vukasin's sense of impartiality and justice was again diminished in his judicial functions wherein he again showed bias to the government and prejudice to plaintiff as follows:

1. On April 15, 1985, plaintiff's counsel, Albin E. Danell, wrote a letter to the Honorable John P. Vukasin, Jr., requesting ". . . the Courts' permission and indulgence in filing an extended brief . . ." because ". . . plaintiff has suffered prolonged injustice . . ." (Exhibit 5.) This extended brief alleged violations of plaintiff's civil rights with State defendants.

2. On april 17, 1985, the court filed this brief as shown on the face sheet of her "Points and Authorities." (Exhibit 6.)

3. On April 23, 1985, seven (7) days later, plaintiff's "leave to file brief in excess of 25 pages [was] DENIED." (Exhibit 7 Docket Statement) (Emphasis added.)

4. On May 9, 1985, the government, in its opposition to plaintiff's Motion for relief from Order was filed and permitted to become a part of the record. Plaintiff's Motion (see paragraph 2) was returned.

5. In plaintiff's letter dated April 15, 1985 (see Exhibit 5), plaintiff's

counsel states that: "The brief follows the last hearing in Case No. C-83-20374 WAI before it was related to Case No. C-83-0719."

6. On June 19, 1986, the Case Systems Administrator, Office of the Clerk United States District Court informed the Clerk of the U.S. Court of Appeals, san francisco, that Case No. #-84-1519 JPV and C-83-0719 JPV are related (emphasis added). These two related cases were then assigned a Ninth Circuit's number of 85-2439 and consolidated with her counsel's number 84-2440 from which he never appealed. (Exhibit 8.)

7. The Ninth Circuit rendered a Memorandum which was filed on March 13, 1987, in which the court, having accepted the cases as related by the clerk of the lower court, william L. Whittaker, held that plaintiff's case against the Department of Labor, Case No. C-83-0719 JPV ". . . was never appealed and is not before this court." (Exhibit 9.)

Plaintiff, therefore, alleges that her three motions now submitted for relief from judgment and order under Rule 60(b)(4), and which contain defendant's conspiracy, fraud, state violations of her civil rights under 42 U.S.C.A. §§ 1983, 1985(2)(3) would be severely compromised by Judge Vukasin's presence in these actions due to his insensitivity to civil rights violations and federal and local rules of the district Court for the Northern District of California, which were violated thereby exemplifying his prejudice toward plaintiff. Plaintiff has been unable to obtain counsel because of Judge Vukasin's unjustified sanctions on her previous counsel as shown in her three motions. Therefore, she remains under sustained duress.

Dated: July 15, 1992

Respectfully submitted,
By Lynette Rogers
Lynette Rogers, plaintiff prose

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

March 7, 1984 FILED MAR 26 1984

Date

RELATED CASE ORDER

A notice of related cases has been filed (District Court Clerk William 1. Whittaker's stamp covers part of two lines) the following cases are related within the meaning of Local Rule 205-2 or local Rule 320-1.

C-83-0719 JPV LYNETTE ROGERS -v- DEPARTMENT OF LABOR
c-83-20374 WAI ROGERS -v- VETERANS ADMINISTRATION

As the Judge assigned the earliest filed case, I advise the Assignment Committee that these cases are not related.

No signature on line
UNITED STATES DISTRICT JUDGE

As the Judge assigned the earliest filed case, I advise the Assignment Committee that these cases are related within the meaning of Local Rule 205-2 or Local Rule 320-1.

/s/J P Vukasin Jr.
UNITED STATES DISTRICT JUDGE

ORDER

It appearing to the assignment Committee that these cases are related within the meaning of Local Rule 205-2 or Local Rule 320-1, IT IS ORDERED that all of such cases are reassigned to the Honorable J.P. Vukasin, JR. . Counsel are instructed that all future filings shall bear the initials JPV immediately after the case number. ALL MATTERS PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED.

DATE: MAR 27 1984 EX1

WTM:emp February 15, 1984

James Waggener
c/o Judge William A, Ingram
U. S. District Court
175 W. Taylor
San Jose, CA 95112

Re: Lynette Rogers v. Veterans Administration, et al. - No. C-83-20374 WAI

Dear Mr. Waggener:

This letter is to confirm our telephone conversation of today in which you informed me that the Status Conference in the above-captioned case currently set for Monday, February 27, 1984, will be continued. It will now be held at the same time as the hearing of Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, on Monday, March 12, 1984, at 10:00 A.M. This date is subject to change, however, because of the Notice of Related Case, filed today by defendants in this case. That notice asks that this case be related to Rogers v. Department of Labor, et al., No. C-83-0719 JPV. Should this case be transferred to Judge Vukasin, of course, all dates would be vacated and new dates would be noticed in that Court.

Thank you for your consideration and cooperation in this matter.

Very truly yours,
JOSEPH P. RUSSONIELLO
United States Attorney
/s/ William T. McGivern, Jr.

By: WILLIAM T. McGIVERN, Jr.
Chief Assistant United States Attorney
Attorneys for Defendants

cc: Albin E. Danell, Esq.
Attorney for Plaintiff

EX 2

FOR THE ASSIGNMENT COMMITTEE:
/s/ (not readable)
CHIEF JUDGE

COPIES TO: Counsel
Courtroom Deputies
Case systems Administrators

Entered in Computer 3/27/4
Log Book Noted

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CASE NO.: C-83-20374 WAI FILED MAR 29 94
TITLE: Rogers v. Veterans Adm

REASSIGNMENT ORDER

GOOD CAUSE APPEARING THEREFORE,
IT IS ORDERED that this case is reassigned to the Honorable JOHN P VUKASIN, JR. (X) SAN FRANCISCO ( ) SAN JOSE DIVISION, for all further proceedings.
This case has been assigned the

Ex. 3

following new number: C-84-1519 JPV. All future filings should reflect this new number. The old number is no longer applicable to this case. Please change all of your records accordingly.

ALL MATTERS OTHER THAN TRIAL DATES PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED.

DATED: MAR 29 1984

FOR THE ASSIGNMENT COMMITTEE:
/s/ (cannot read name)
CHIEF JUDGE

NEW CASE FILE CLERK:
Copies to: Courtroom Deputies (checked)
Special Projects (checked)
Log Book Noted (checked)
Entered in Computer 3/27/4

CASE SYSTEMS ADMINISTRATOR:
Copies to: All Counsel
Transferor CSA
NDC Assgt-1 (SJ/SF) Rev 12-83

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
---000---

BEFORE: THE HONORABLE J. P. VUKASIN, JUDGE

LYNETTE ROGERS
PLAINTIFF,

VS. NO. C-83-0719-JPV

UNITED STATES DEPARTMENT OF LABOR, SECRETARY OF LABOR, OFFICE OF WORKERS COMPENSATION PROGRAMS, RALPH M. HARTMEN, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, GERALD T. CULLEN, DEPUTY COMMISSIONER, OFFICE OF WORKERS' COMPENSATION PROGRAMS, EDWARD OROZCO AND LAWRENCE SCHELL, CLAIM EXAMINERS, OFFICE WORKERS' COMPENSATION PROGRAMS,
DEFENDANTS.

REPORTER'S TRANSCRIPT
TUESDAY, JANUARY 17, 1984

APPEARANCES:

FOR THE PLAINTIFF: ALBIN E. DANELL, ESQUIRE
A PROFESSIONAL CORPORATION
111 W. ST. JOHN STREET,
SUITE 650
SAN JOSE, CALIFORNIA 95113

FOR THE DEFENDANTS: JOSEPH P. RUSSIONELLO
UNITED STATES ATTORNEY
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA
94102
BY: DEBORAH SEYMOUR SHEFLER
ASSISTANT UNITED STATES
ATTORNEY

COURT REPORTER: VIVIAN ANN PELLA, C.S.R.

TUESDAY, JANUARY 17, 1984

THE COURT: GOOD MORNING, COUNSEL.
MR. DANELL: GOOD MORNING, YOUR HONOR.
MS. SHEFLER: GOOD MORNING.
THE CLERK: CALLING CIVIL MATTER C-83-0719, LYNETTE ROGERS VERSUS UNITED STATES DEPARTMENT OF LABOR.
WILL COUNSEL PLEASE STEP FORWARD AND STATE THEIR APPEARANCES FOR THE RECORD.
MS. SHEFLER: DEBORAH SHEFLER FOR THE DEFENDANTS.
MR. DANELL: YES, YOUR HONOR, ALBIN DANELL FOR THE PLAINTIFFS AND PARTY TO THE OPPOSITION OF THE MOTION FOR SUMMARY JUDGMENT.
THE COURT: ALL RIGHT. TWO MOTIONS ON THIS MORNING, RIGHT? DEFENDANTS' MOTION FOR DISMISSAL FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION FOR INTRA DISTRICT CHANGE OF VENUE.
MR. DANELL: THAT'S CORRECT, YOUR HONOR. I THOUGHT THERE WAS A STATUS REPORT AS WELL.
THE COURT: IS THERE A STATUS CONFERENCE ALSO?
THE CLERK: YOU DON'T RULE ON THE SUMMARY JUDGMENT.
THE COURT: OKAY. FINE. THE MOTION FOR

TUESDAY, JANUARY 17, 1984

APPEARANCES:

FOR THE PLAINTIFF: ALBIN E. DANELL, ESQUIRE
A PROFESSIONAL CORPORATION
111 W. ST. JOHN STREET,
SUITE 650
SAN JOSE, CALIFORNIA 95113

FOR THE DEFENDANTS: JOSEPH P. RUSSIONELLO
UNITED STATES ATTORNEY
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA
94102
BY: DEBORAH SEYMOUR SHEFLER
ASSISTANT UNITED STATES
ATTORNEY

COURT REPORTER: VIVIAN ANN PELLA, C.S.R.

TUESDAY, JANUARY 17, 1984

THE COURT: GOOD MORNING, COUNSEL.
MR. DANELL: GOOD MORNING, YOUR HONOR.
MS. SHEFLER: GOOD MORNING.
THE CLERK: CALLING CIVIL MATTER C-83-0719, LYNETTE ROGERS VERSUS UNITED STATES DEPARTMENT OF LABOR.
WILL COUNSEL PLEASE STEP FORWARD AND STATE THEIR APPEARANCES FOR THE RECORD.
MS. SHEFLER: DEBORAH SHEFLER FOR THE DEFENDANTS.
MR. DANELL: YES, YOUR HONOR, ALBIN DANELL FOR THE PLAINTIFFS AND PARTY TO THE OPPOSITION OF THE MOTION FOR SUMMARY JUDGMENT.
THE COURT: ALL RIGHT. TWO MOTIONS ON THIS MORNING, RIGHT? DEFENDANTS' MOTION FOR DISMISSAL FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION FOR INTRA DISTRICT CHANGE OF VENUE.
MR. DANELL: THAT'S CORRECT, YOUR HONOR. I THOUGHT THERE WAS A STATUS REPORT AS WELL.
THE COURT: IS THERE A STATUS CONFERENCE ALSO?
THE CLERK: YOU DON'T RULE ON THE SUMMARY JUDGMENT.
THE COURT: OKAY. FINE. THE MOTION FOR INTRA DISTRICT CHANGE OF VENUE.

MR. DANELL: YES, YOUR HONOR.

THE COURT: THAT MAY OR MAY NOT BE MOOT DEPENDING ON THE RULING FOR THE OTHER MOTION FOR DISMISSAL OF SUMMARY JUDGMENT.

MAY I HEAR YOUR ARGUMENT IN FAVOR OF THE MOTION, PLEASE.

MS. SHEFLER: GOOD MORNING, YOUR HONOR. EVERYTHING I HAVE TO SAY I THINK WE'VE SAID IN THE PAPERS THAT WE'VE SUBMITTED. I THINK BASICALLY THE MAIN POINT IS THIS LADY WAS DENIED HER WORKERS COMP CLAIM BASED ON SOMETHING THAT HAPPENED TEN YEARS AGO. SHE'S TRIED EVER SINCE TO GET THAT DECISION RECONSIDERED THROUGH APPROPRIATE CHANNELS. SHE'S APPLIED TWICE FOR RECONSIDERATION OF THAT DENIAL. THE STATE MAINTAINS THAT HER WORK DISABILITY WAS NOT WORK-RELATED.

NOW, SHE HAS NOT YET GOTTEN A RULING FOR RECONSIDERATION, BUT AS SHE PUTS IT IN HER RESPONSE BRIEF, THAT SHE HAS NOT GOTTEN THE DECISION, SHE FILED THIS ACTION ON THE PRIVACY ACT. THIS IS A BACK DOOR WAY OF GETTING A REVERSAL OF HER WORKERS COMP DECISION. SHE'S NOT THE FIRST PERSON TO DO THIS. OTHER DECISIONS, FOR INSTANCE, THE TURNER CASE, WHERE SOMEONE TRIED TO GET A SEVERAL YEAR OLD DEFICIENCY RATING CHANGED, AND COURTS HAVE JUST NOT PERMITTED THE PRIVACY ACT TO BE UTILIZED AS AN ALTERNATIVE MEANS FOR ADMINISTRATIVE REVIEW.

THE COURT: OKAY.

MS. SHEFLER: IF THE COURT HAS ANY SPECIFIC QUESTIONS, I'D BE PLEASED TO STATE IT, BUT I THINK IT'S REALLY SIMPLE.

THE COURT: IS YOUR NAME DANELL?

MR. DANELL: YES, DANELL, YOUR HONOR.

YOUR HONOR, TO CLARIFY WHAT WE'RE SEEKING HERE IS NOT A RECONSIDERATION OF THE VETERANS ADMINISTRATION DENIAL OR THE DEPARTMENT OF LABOR'S DENIAL. I BELIEVE THE LAST TIME THAT WE WERE IN COURT FOR A STATUS CONFERENCE WITH JUDGE SCHWARZER, JUDGE SCHWARZER TOOK THE POSITION, IF I'M NOT MISTAKEN -- LET'S ASSUME -- BECAUSE THE DEPARTMENT OF LABOR HAS NOT ACTED ON THE

APPEAL WITHIN THE TIME PROMULGATED BY THEIR OWN REGULATIONS, WE'LL CONSIDER IT DENIED ON THE STATUS CONFERENCE AND WE'LL PROCEED ON THAT BASIS.

WHAT MRS. ROGERS IS CLEARLY SEEKING IS DAMAGES UNDER THE PRIVACY ACT. AND IT IS BASED ON FALSE FACTUAL INFORMATION.

IF I COULD REFER YOUR HONOR TO THE STATUS BRIEF THAT WAS FILED ON DECEMBER THE 5TH, IT PRETTY WELL SETS OUT THE FACTS THAT --

THE COURT: MAY I INTERRUPT YOU, PLEASE. ONE MINUTE, PLEASE.

YOU SAY YOUR CLAIM UNDER THE PRIVACY ACT

MR. DANELL: YES, YOUR HONOR.

THE COURT: -- IS BASED ON FALSE FACTUAL INFORMATION?

MR. DANELL: THAT'S CORRECT, YOUR HONOR.

THE COURT: AND IT APPEARS THAT WHAT YOU WANT CHANGED IS A PSYCHOLOGICAL OR PSYCHIATRIC EVALUATION?

MR. DANELL: YOUR HONOR, THE OPINION ITSELF IS BASED UPON ERRONEOUS AND ILLEGALLY OBTAINED INFORMATION. I THINK THAT HAS TO BE CONSIDERED. THESE ARE THE PROBLEMS WE'VE HAD READING IN THE BLEVINS CASE, READING IN THE DEPARTMENT OF ARMY CASE, WHICH WE CITED IN OUR BRIEF, SEEMS TO INDICATE THAT IT DOESN'T MAKE A LOT OF SENSE.

IF YOU'RE GOING TO SAY, "YOU CAN'T CHANGE AN OPINION BASED ON ERRONEOUS FACTS," YOU CAN CHANGE THE FACTS. IF THE FACTS FOR THAT OPINION IS WRONG, THEN THERE'S A VIOLATION OF THE PRIVACY ACT. THAT SEEMS TO ME THE PURPOSE OF THE PRIVACY ACT, OTHERWISE, ANY GOVERNMENTAL AGENCY IN THE UNITED STATES COULD SAY, "WELL, WE'VE MADE AN ADMINISTRATIVE DECISION. SURE, WE GOT THE FACTS FROM AN IMPROPER SOURCE. PERHAPS WE DON'T UNDERSTAND THE FACTS; PERHAPS THE FACTS ARE MISSTATEMENTS; PERHAPS THEY'RE OUTRIGHT LIES."

AND BASING A DECISION ON THAT, YOUR HONOR, I THINK IS WRONG. IF WE CORRECT THOSE UNDERLYING FACTS AND WE CAN PROVE TO A TRIER OF FACT, TO A COURT OR JURY, THAT

INTRA DISTRICT CHANGE OF VENUE.

MR. DANELL: YES, YOUR HONOR.

THE COURT: THAT MAY OR MAY NOT BE MOOT DEPENDING ON THE RULING FOR THE OTHER MOTION FOR DISMISSAL OF SUMMARY JUDGMENT.

MAY I HEAR YOUR ARGUMENT IN FAVOR OF THE MOTION, PLEASE.

MS. SHEFLER: GOOD MORNING, YOUR HONOR. EVERYTHING I HAVE TO SAY I THINK WE'VE SAID IN THE PAPERS THAT WE'VE SUBMITTED. I THINK BASICALLY THE MAIN POINT IS THIS LADY WAS DENIED HER WORKERS COMP CLAIM BASED ON SOMETHING THAT HAPPENED TEN YEARS AGO. SHE'S TRIED EVER SINCE TO GET THAT DECISION RECONSIDERED THROUGH APPROPRIATE CHANNELS. SHE'S APPLIED TWICE FOR RECONSIDERATION OF THAT DENIAL. THE STATE MAINTAINS THAT HER WORK DISABILITY WAS NOT WORK-RELATED.

NOW, SHE HAS NOT YET GOTTEN A RULING FOR RECONSIDERATION, BUT AS SHE PUTS IT IN HER RESPONSE BRIEF, THAT SHE HAS NOT GOTTEN THE DECISION, SHE FILED THIS ACTION ON THE PRIVACY ACT. THIS IS A BACK DOOR WAY OF GETTING A REVERSAL OF HER WORKERS COMP DECISION. SHE'S NOT THE FIRST PERSON TO DO THIS. OTHER DECISIONS, FOR INSTANCE, THE TURNER CASE, WHERE SOMEONE TRIED TO GET A SEVERAL YEAR OLD DEFICIENCY RATING CHANGED, AND COURTS HAVE JUST NOT PERMITTED THE PRIVACY ACT TO BE UTILIZED AS AN ALTERNATIVE MEANS FOR ADMINISTRATIVE REVIEW.

THE COURT: OKAY.

MS. SHEFLER: IF THE COURT HAS ANY SPECIFIC QUESTIONS, I'D BE PLEASED TO STATE IT, BUT I THINK IT'S REALLY SIMPLE.

THE COURT: IS YOUR NAME DANELL?

MR. DANELL: YES, DANELL, YOUR HONOR.

YOUR HONOR, TO CLARIFY WHAT WE'RE SEEKING HERE IS NOT A RECONSIDERATION OF THE VETERANS ADMINISTRATION DENIAL OR THE DEPARTMENT OF LABOR'S DENIAL. I BELIEVE THE LAST TIME THAT WE WERE IN COURT FOR A STATUS CONFERENCE WITH JUDGE SCHWARZER, JUDGE SCHWARZER TOOK THE POSITION, IF I'M NOT MISTAKEN -- LET'S ASSUME -- BECAUSE THE DEPARTMENT OF LABOR HAS NOT ACTED ON THE

THESE THINGS WERE IMPROPERLY OBTAINED, AND ON TOP ERRONEOUS AND SHOULD NOT BE THE BASIS FOR THE DECISION --

I CAN MAKE REFERENCE, YOUR HONOR, TO PAGE 5 OF THE BRIEF WHICH TALKS ABOUT MR. CULLEN. HE HAD A ROUGH DRAFT COMPOSED BY HER FOUR SUPERVISORS. THAT WAS COMPOSED BY THE VETERANS ADMINISTRATION IN VIOLATION OF ITS OWN REGULATIONS. SHE NEVER HAD THE OPPORTUNITY TO REFUTE THOSE. THEY WERE PUT IN FOR A BASIS FOR REVIEW.

ON TOP OF THAT, I THINK ONE OF THE MOST IMPORTANT PARTS OF THE PROBLEM HERE, YOUR HONOR, IS DR. BURR'S BEST PROFESSIONAL JUDGMENT, WHICH WAS BASED UPON SO-CALLED EVIDENCE THAT HE OBTAINED FROM SAN JOSE STATE WHERE SHE WAS A STUDENT; NEVER ADVISED HER THAT THEY WERE DOING THAT.

WHEN SHE REQUESTED THIS FILE, YOUR HONOR, SHE WAS TOLD IT WAS NEVER IN EXISTENCE.

THIS IS A CATCH-22 SITUATION. WE CAN'T GET A COPY OF THE REPORT THAT DR. BURR BASED HIS PROFESSIONAL JUDGMENT ON BECAUSE IT WAS ILLEGALLY OBTAINED AND IT DOESN'T EXIST ANYWHERE IN THE RECORDS. THAT'S JUST TWO REFERENCES, YOUR HONOR.

AND IF THE COURT -- I THINK WE'VE INDICATED IN OUR RATHER VOLUMINOUS PLEADINGS, THE DEPARTMENT OF LABOR INVITED MRS. ROGERS TO SUBMIT MEDICAL EVIDENCE. SHE DID. SHE SUBMITTED A 400-PAGE FOLDER. THAT WAS IGNORED FOR AT LEAST THE PAST THREE YEARS, YOUR HONOR.

A RECONSIDERATION OF HER CLAIM AT THIS POINT WOULD NOT DO HER ANY GOOD. I THINK THIS IS THE EXAMPLE OF WHAT THE PRIVACY ACT WAS DESIGNED FOR. I THINK SHE CAN PROVE AND SHOW AND WE CERTAINLY HAVE A FACTUAL DISPUTE OF THAT.

NOW, THIS JUDGMENT, SHE CAN PROVE THAT THE UNDERLYING FACTS WERE ERRONEOUS. IT WAS BASED UPON HER DISMISSAL FROM THE VETERANS ADMINISTRATION AND ALSO SHE NEVER -- WELL, THERE WERE OTHER ITEMS, YOUR HONOR. I DON'T

KNOW IF THEY'RE REAL RELEVANT TO THIS PARTICULAR PROCEEDING, BUT I DON'T SEE HOW A PROFESSIONAL JUDGMENT CAN BE OBTAINED BASED UPON RECORDS OF PAST PERFORMANCE OF MRS. ROGERS.

WHILE SHE WAS EMPLOYED BY THE VETERANS ADMINISTRATION SHE WAS GIVEN PSYCHIATRIC EXAMS AND MEDICAL EXAMS FOR SEVERAL YEARS WHILE SHE WAS EMPLOYED AND CONVENIENTLY, SAY, SHE HAD SOME PRE-EXISTING DISTRESS WHICH WAS NOT COVERED BY THE DISABILITY CLAIM AND, SAY, THAT'S THE END OF IT.

I THINK THAT IS NOT WHAT THE ACT IS DESIGNED FOR. WE HAVE A CLEAR-CUT FACT OR FACTUAL BASIS.

THE COURT: THANK YOU. DO YOU HAVE A RESPONSE?

MS. SHEFLER: WHAT WE DON'T HAVE IS A CLEAR-CUT FACT THAT'S ERRONEOUS. IN THE DOE CASE, WHICH PLAINTIFF'S COUNSEL CHARACTERIZES AS A LEADING CASE IN THIS AREA, THE PLAINTIFF POINTED TO A SPECIFIC FACT. THERE WERE ALLEGATIONS THAT SHE HAD COMMITTED THREATS BY UNIDENTIFIED PEOPLE. THEY SUBMITTED VOLUNTARY EVIDENCE THAT THIS SPECIFIC IDENTIFIED FACT WAS WRONG AND THE AGENCY STILL REFUSED TO CHANGE ITS RECORD.

THERE WAS AN IDENTIFIED FACT -- WHAT WE DO HAVE HERE ARE VAGUE ALLEGATIONS ABOUT INFORMATION FROM SAN JOSE STATE THAT DR. BURR RELIED ON. IN FACT, IT SAYS IN DR. BURR'S REPORT, WHICH IS NOT A MATTER OF EVIDENCE, BECAUSE IT IS PRIVATE, ALTHOUGH PLAINTIFF DOES SEEM TO HAVE IT. HE RELIED ON FIVE CONVERSATIONS HE HAD WITH THE PLAINTIFF AND WHATEVER HAPPENED AT SAN JOSE STATE WAS CLEARLY -- ONE SMALL THING THAT HE RELIED ON WAS MAKING THE DECISION ABOUT THE JOB-RELATED -- HER EMOTIONAL PROBLEMS.

PLAINTIFF TALKS ABOUT HOW THINGS WERE OBTAINED. HE HASN'T SHOWN ANY EVIDENCE THAT THINGS WERE OBTAINED ILLEGALLY. THE PRIVACY ACT IS ABOUT FALSE FACTS, NOT HOW THINGS ARE OBTAINED.

THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. THE MATTER IS SUBMITTED.

MR. DANELL: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. I'M GOING TO GRANT THE DEFENDANTS' MOTION. YOU WANT A DISMISSAL OR A SUMMARY JUDGMENT I SUSPECT WE MIGHT AS WELL MAKE IT A SUMMARY JUDGMENT AND MAKE IT FINAL.

MR. DANELL: THANK YOU, YOUR HONOR

THE COURT: VERY WELL. THE MOTION FOR SUMMARY JUDGMENT IS GRANTED.

IT APPEARS TO THE COURT THAT THE PLAINTIFF HERE IS ASKING THE COURT TO DO SOMETHING THAT HE'S NOT AUTHORIZED TO DO. UNDER THE PRIVACY ACT, THE COURT IS BEING ASKED TO MODIFY A PSYCHIATRIC EVALUATION, DELETE REFERENCES, THE FACT THAT THE MOTION, SUCH AS IT OCCURRED TO THE PLAINTIFF HERE, IS "STANDARD PROCEDURE AND NORMAL," END QUOTE, IF I RECALL CORRECTLY.

ALSO, I'M BEING ASKED TO MODIFY OR STRIKE A NARRATIVE REPORT AND EVALUATION OF SUPERIORS OR SUPERVISORS. THAT DOES NOT APPEAR TO BE THE TYPE OF CHANGES OF FACT THAT HAS BEEN CONTEMPLATED IN CONNECTION WITH THIS ACT.

I AGREE THAT THE COURT CAN CHANGE CLEARLY ERRONEOUS FACTS, BUT THIS PLAINTIFF IS ASKING FOR IT TO GO BEYOND THAT.

THE MOTION FOR SUMMARY JUDGMENT IS GRANTED.

THE MOTION FOR INTRA DISTRICT CHANGE OF VENUE IS NOW MOOT. THEREFORE, I NEED NOT RULE ON THAT AT THIS TIME.

AND I BELIEVE THIS MATTER CALLS FOR A WRITTEN OPINION AND I'M GOING TO ASK THE U.S. ATTORNEY TO PREPARE A DRAFT OF PROPOSED OPINION, SEND A COPY TO OPPOSING COUNSEL, SUBMIT IT TO ME, AND YOU'LL HAVE AN OPPORTUNITY TO SUBMIT ANY OPPOSING COMMENTS TO THE DRAFT.

MR. DANELL: THANK YOU VERY MUCH, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH.

MS. SHEFLER: IS THERE A TIME BY WHICH YOU WANT THE

THE COURT: WHAT WOULD BE CONVENIENT FOR YOU?

MS. SHEFLER: WELL, I'D LIKE TO OBTAIN A COPY OF THE TRANSCRIPT TODAY, ABOUT TWO WEEKS?

THE COURT: THIRTY DAYS.

MR. DANELL: FINE.

THE COURT: WHY DON'T WE SAY YOU HAVE 15 DAYS TO RESPOND.

MR. DANELL: TWENTY DAYS, YOUR HONOR?

THE COURT: TWENTY DAYS.

MR. DANELL: THANK YOU VERY MUCH, YOUR HONOR.

MS. SHEFLER: THANK YOU.

THE COURT: THANK YOU.

---000---

CERTIFICATE OF REPORTER

I, VIVIAN PELLA, THE UNDERSIGNED OFFICIAL REPORTER PRO TEM OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA 94102, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1 THROUGH 9 INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

/S/ VIVIAN PELLA
VIVIAN PELLA, C.S.R.

Albin E. Danell
ATTORNEY AT LAW
Suite 650 Community Bank Building
111 West St. John Street
SAN JOSE, CALIFORNIA 95113
Telephone (408)287-3317

April 15, 1985

Honorable John P. Vukasin, Jr.
United Sates District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, California 95102

Re: Lynette Rogers vs. Veterans Admin., et al. Case No. C-84-1519 JPV

Dear Judge Vukasin:

The purpose of this letter is to request your permission to file a brief in the above-referenced case that exceeds the limits set forth in Local Rule 220-4. The brief follows the last hearing in Case No. C-83-20374 WAI, before it was related to Case No. C-83-0719 JVP. These cases were then reassigned Case No. C-84-1519 JVP.

At this last hearing, the Honorable William A. Ingram granted defendant's Motion for Summary Judgment and dismissed Action No. C-83-20374 WAI. The instant motion is filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and seeks relief from the Summary Judgment and Order of Dismissal.

Plaintiff's grievances against the defendant, which extend back over ten years, and the nature of this case, are the reasons for this brief's length. I have endeavored to present as complete a history of her claim as possible so that the Court may have a view of the entire matter. In order to support and clarify the factual elements of the brief, I have supplied the Court with a separate Addendum of Exhibits.

The exhibits are numerous and are designated A through Z, and then continue with A2 through Z2, A3 through Z3, A4 through Z4 and A5 through B5. Occasionally, the names of a Veterans' Administration Hospital patients appeared on some of these exhibits. Any deletions were merely in the interest of protecting these patients'

privacy.

It is my firm belief that plaintiff has suffered prolonged injustice and I respectfully request the Court's permission and indulgence in filing this extended brief.

Respectfully submitted,
Albin E. Danell

AED/bmp
Enclosure

RECEIVED APR 17 1985
William L. Whittaker, Clerk
U.S. District Court

ORIGINAL FILED
APR 17 1985
(by Clerk above)
the above was
crossed out

ALBIN E. DANELL
A Professional Corporation
111 West St. John Street
Suite 650
San Jose, California 95113
Telephone: (408) 289-3317

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
vs.

VETERANS ADMINISTRATION; RICHARD L. ROUDEBUSH, Director, VETERANS ADMINISTRATION; and JOHN D. CHASE, M.D. CHIEF MEDICAL DIRECTOR, VETERANS ADMINISTRATION,
Defendants.

CIV. # 3-84-1519-JPV

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELIEF FROM SUMMARY JUDGMENT (FRCP RULE 60(b)(2)(3)

TABLE OF CONTENTS

	Page(s)
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii-vii
28-2.2 STATEMENT OF JURISDICTION	viii
28-2.3 ATTORNEY'S FEES	ix
28-2.5 REVIEWABILITY AND STANDARD OF REVIEW	x
28(a)(3) STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	x-xi
28(a)(4) STATEMENT OF THE CASE	xi-xv
ARGUMENT	1
I. BACKGROUND AND BASIS FOR PETITION	1
A. Did Judge John P. Vukasin Abuse His Discretion by Failing to Recuse Himself Under 28 U.S.C. §144?	1
B. Is Recusal Appropriate at the appellate Level Under 28 U.S.C. §455(b)(1)?	4
II. DOES APPELLANT'S REQUEST FOR DISQUALIFICATION OF JUDGE J.P. VUKASIN, JR., HAVE A REASONABLE BASIS?	6
III. WAS THERE A REASONABLE BASIS FOR APPELLANT'S FEAR?	8
III. EXTRAJUDICIAL PROCEEDINGS	19
STATEMENT OF FACTUAL PROCEEDINGS IN SUPPORT OF MOTION FOR DISQUALIFICATION	20
IV. SUMMARY	22
V. HAS APPELLANT HAD A FAIR OPPORTUNITY TO LITIGATE HER COMPLAINTS OF STATE ACTIONS, UNDER COLOR OF LAW, IN HER ALLEGED CIVIL RIGHTS VIOLATIONS?	24
CONCLUSION	32
VI. PRAYER FOR RELIEF	32

C-83-0719 ROGERS v. US DEPT. OF LABOR

DATE		NR	PROCEEDINGS
1983			
		1	COMPLAINT FOR DAMAGES Under the Federal Privacy of 1974, summons issued
		2	ORDER: Status conference set 5/20/83 at 9:00
Mar	8	3	Summons on return executed as to: Estella Thompson for: -Gerald T. Cullen on 2/18/83. -Office of Worker's Compensation Programs on 2/18/83. -Contact Office on 2/18/83. -Lawrence Schell on 2/18/83. -Edward Orozco on 2/18/83.
Apr	6	4	Plaintiff's amendment to proof of service to include service on Deborah Seymour.
May	16	5	ANSWER TO COMPLAINT by defendants.
		6	Plaintiff's status conference statement.
		7	Defendants' status report.
	20	8	MINUTES: (or/none) re Status conference held. Continued to 6-10-83 at 10 AM for further status. WWS
Jun	8	9	MINUTES: (or/none) re Status conference previously set for 6-10-83 continued to 7-28-83 at 10AM per counsel's request. WWS
	10	10	Letter dated 6-9-83 from Albin Danell to AUSA d.Seymour re status conference date.
Jul	18	11	Defendants' status report.
	26	12	Plaintiff's status report.

1983

Aug	1	13	STIPULATION & ORDER RE STATUS SET FOR 7-28-83 be continued to 9-9-83 at 9 AM.
Sep	21		RECEIVED: Stipulation & Order continued status from 9-9-83 to 10-7-83 WWS
	22	14	STIPULATION & ORDER that status conference continued from 9-9-83 to 10-7-83, 9 AM.
Oct	4	15	Defendants' status report
	6	16	Plaintiff's status report.
	7	17	MINUTES: (or/none) re Status held. Continued to 12-16-83, 10 AM for further status. WWS
OCT 17 1983			REASSIGNED PURSUANT TO ORDER OF THE ASSIGNMENT COMMITTEE
Nov	8	18	Plaintiff's Notice of Motion for Intradistrict Change of venue 12-14-83 at 10:00a.m.
		19	Plaintiff's Memo of Points and Authorities in support of #18

(Bottom of page) see sheet "A"
(No entries at top of this sheet)

1984 [missing docket sheet)

Mar	7	33	Plaintiff's Response to Memorandum Decision
Mar	12	34	Defendants' Request to Strike Plaintiff's Response in Opposition to Memorandum Decision
	14	35	Plaintiff's Counterstatement Opposing Notice of related Case
	19	36	Plaintiff's Opposition to #34
		37	Plaintiff's Certificate of Service on #36
Mar	26	38	RELATED CASE ORDER: Case is Deemed Related to C83 20374 WAI (C84 1519 JPV) Copies to Counsel JPV RFP

Aug 28	39	ORDER: Plaintiff's Motion for Change of Venue Moot (see order) Defendant's Motion for Summary Judgment, GRANTED JPV -Entered in Civil Docket 8-30-84 Clerk
Oct 16	40	JUDGMENT OF DISMISSAL: In Accordance With Order of 8-28-84, Case is Dismissed JPV -Entered in Civil Docket 10-16-84 Copies to Counsel Clerk
1985		
Apr 30	41	AMENDED ORDER DNEYING PLAINTIFF'S MOTION FOR CHANGE OF VENUE AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (see order) -Entered in Civil Docket 5-2-85 Clerk JPV
1986		
Jan 29	42	Appellant's Designation of Reporter's Transcript 1-12-84, for Appeal filed in C84 1519 JPV -
31	43	REPORTER' TRANSCRIPT, 1-17-84
Mar 11	44	REPORTER'S TRANSCRIPT 1-12-84
Jun 19		Certificate of Record mailed to USCA & Counsel Reporter's Transcripts mailed to USCA - Notice to Counsel
(top of page'		Sheet "B" C83 0719
1987		
Jan 8		File mailed to USCA
Sep 9	46	Receipt from USCA for File File returned from USCA
1992		
Jul 27	47	Plaintiff's motion to amend pleadings
	48	Proof of Service submitted by plaintiff of motions by mail

	49	Proof of Service submitted by paintiff of motions for disqualifocation
Aug. 24	50	Letter submitted by plaintiff re: motion for disqualifocation
Jul. 16	51	Plaintiff's motion no. 3 for relief from judgment, Memorandum of Points & Authorities in support of motion and Proposed Order
	52	Plaintiff's motion no. 2 for relied from judgment, Memorandum of Points & Authorities in support of motion and Proposed Order
	53	Plaintiff's motion to serve certificate of process
	54	Plaintiff's Proof of Service of motions for disqualification
	55	Plaintiff's Declaration of Service of Moiton no. 1
	56	" " no. 3
	57	" " no. 3
Sept. 8	58	Order by Judge Vukasin denying plaintiff's motions for releif from judgment
17	59	Plaintiff Lynette Rogers motion to alter judgment
Oct. 9	60	Plaintiff Lynette Rogers Notice of hearing 11/12/92 at 10:00 re: transfer of case to San Jose Division
20	61	ORDER by Judge Vukasin denying plaintiffs' motion for intradistrict transfer and motion to amend judgment

1992

Sept. 1/	62	Plaintiff's Motion for intra-district venue, Received Documents from San Jose on 12/31/92
Oct. 16	63	Plaintiff's Motion for enlargement of time re: motion to change venue, hearing scheduled for 11/12/93

-over-

(No further pages to this document)

William To McGivern, Jr.
U.S. Attorney's Office
450 Golden Gate Ave, Box 36055
San Francisco CA 94102
415/556-8477

Proceedings ~~C-83-20374-WAI~~
84-1519 JPV

Year	NR	ROGERS VETERANS ADMIN
1983		
Nov 18	1	COMPLAINT for indepdent equitable relief from summary judgment-issued.
	2	ORDER: Setting Status Conference or 2-20-84 at 1a;30 pm in San Jose.
Dec 16	3	Summons Returned Executed as to Office of Augley Hendricks, Veterans administration District Counsel, United States Attorneys Office
1984		
Feb 10	4	Defendants' ANSWER
	5	Return of deposition subpoena re R Burr executed on 2/9/84
	6	Plaintiff's deposition notice re R Burr, see #5 for return
13	7	Clerk's notice of continuance of status conference set for 2/20 reset to 2/27/84 at 2:00pm
	8	Defendant's declaration of P. Dugan.
	9	- notice and motion to dismiss or in the alternative, for summary judgment; memo of points and authorities; Hearing date 3-12-84 at 10 am

(top cover) DOCKET SHEETS
(headers at top of page)
DIST: 971
OFF: ~~5~~ 3
YR. & NO.: ~~83~~ 84, ~~20374~~ 1519
FILING DATE: 11 18 83
J N/S: 2 360
JUDGE: ~~7115~~ 7122
COUNTY: 0608
DOCKET YH NUMBER: ~~83~~ ~~20374~~; 84 1519
WAI JPV

PLAINTIFFS
01 LYNETTE ROGERS

DEFENDANTS
VETERANS ADMINISTRATION; RICHARD L. ROUDEBUSH, Director Veterans Administration; and JOHN D. CHASE, M.D. CHIEF MEDICAL DIRECTOR, Veterans Adminstration

RELATED TO C 83 719 JPV

CAUSE (Cite the U.S. Civil Statute under which the case is filed and write a brief statement of cause)
Personal Injury

ATTORNEYS
Albin E. Danell
~~111 W. St. John Street, Suite 650~~
~~San Jose, CA 95113~~
~~(408) 287-3317~~
P.O. Box DL
Los Gatos Ca 95031-0410

Lynette Rogers
624 Cornelia court
Mountain View Ca 94040
(415) 967 5426
in pro per re: appeal

15	10	Defendant's notice of related case,
Mar 6		RECEIVED: Stipulation re: status conference set for 3-12-84 to be continued to 3-26-84 at 10 am in San Jose
7		Clerk mailed notice of related case and order to the Chief Judge in San Francisco.
Feb29*	11	Letter from W McGivern re: continuance of status conference
Mar 14	12	Plaintiff's memo of points & authorities in opposition to motion to dismiss or in the alternative, for summary judgment set for 3-26-84 at 10:00am
	13	- counterstatement opposing notice of related case
19	14	Defendants' reply to plaintiff's opposition to moton to dismiss or, in the alternative, for summary judgment set for 3-26-84 at 10:00am
26	15	Plaintiff's Delcaration of A. E. Danell
	16	MINUTES: Of 3-26-84; Defendant's motion to dismiss, submitted; C/R Joe Vickstein WAI
*22	17	Letter to clerk from plaintiff on 3-19-84 Re: Student Practice
26	18	RELATED CASE ORDER - de termined to C83-0719 JPV JPV RFP
29	19	REASSIGMENT ORDER to C 84-1519 JPV RFP

Apr 19 20 Clerk's Order Setting Status Conference for 6-20-84 at 10:00a.m.

*Mar 16 21 STIPULATION & ORDER: Status Conference Continued to 3-26-84 WAI

see sheet "A"

Sheet "A" C84 1519 JPV

Plaintiff: Rogers | Defendant: Veterans Admin.

1984

Apr 19 22 ORDER:Defendants' Motions to Dismiss and Motion for Summary Judgment are GRANTED, Each Party to Bear Own Costs. WAI

23 JUDGMENT: In Accordance With The Preceeding Order, Action is Dismissed, Each Party to Bear Own Costs WAI
-Entered in Civil Docket 5-23-84
Copies to Counsel-Clerk

1985

Apr 17 24 Letter dated 4-15-85 from Albin E. Danell to Judge Vukasin re: Extending Page Limit

25 Plaintiff's Motion for Relief from Order 5-23-85 at 10:00a.m.

26 Plaintiff's Declaration of Albin E. Danell in Support of #25

RECEIVED Plaintiff's Addendum of Exhibits to Points & Authorities

23 27 OREDER: Plaintiff's Application for Leave to File Brief in Excess of 25 pages is DENIED JPV

May 9 28 Defendants' Opposition to #25 - Motion for Sanctions

(Sheet "A" con'd)

29 Defendants' Opposition of Gregory Ferris, Shirley Jenkins Ronald Chase & Dennis May

30 Defendants' Declaration of William T. McGivern Jr in Support of Motion for Sanctions

1985
Jun 6 RECEIVED: Order

RECEIVED: Judgment

13 31 ORDER: Hearing on Plaintiff's Motion for Relief is Continued for 5-23-85 to 6-20-85, present briefing schedule is Vacated Plaintiff brief now due 5-23-85, Defendants Opposition by 6-6-85, reply by 6-13-85

17 32 Plaintiff's Motion for Relief From Order, 6-20-85 at 10:00a.m. -Declaration of Albin E. Danell -Memo of Points and Authorities

Jun 6 33 Defendants' Opposition to Plaintiff's Motion for Relief & Counter Motions for Sanctions 6-20-85 at 10:00a.m.

34 Defendants' Declaration of William McGivern Jr in Support of Motion for Sanctions

(end of Sheet "A") over

Civil Docket Continuation Sheet
PLAINTIFF: Rogers| DEFENDANT: Veterans Admin.

1985
Jun 6 RECEIVED: Judgment

1985			RECEIVED: Order
		35	Defendants' Declarations of Gregory Ferris, Shirley Jenkins Ronald Chase and Dennis May
	13	36	Plaintiff's Request for Enlargement of Time for Filing Reply RECEIVED: Order Continuing Hearing
1985 (con'd)			
	17	37	ORDER: Plaintiff's Request for Enlargement of Time is DENIED JPV
Jul 3		38	MINUTES: (C/R Vivian Pella) 6-20-85 - Plaintiff's Motion for relief is DENIED and Defendant's Motions for Sanctions, GRANTED JPV
	10	39	ORDER: Plaintiff's Motion for Relief from Order is DENIED and Defendants' Motion for Sanctions is GRANTED - attorneys fees of $3,810.00 awarded JPV Entered in Civil Docket 7-15-85 Copies to Counsel Clerk
		40	JUDGMENT: Plaintiff's Attorney is sanctioned in the amount of representing defendants attorneys fees incurred to defend against a meritless motion JPV Entered in Civil Docket 7-15-85 Copies to Counsel Clerk
Aug 9		41	Plaintiff Attorney's NOTICE OF APPEAL re: Sanctions - Fee Paid Notice to USCA and Counsel 84-2439

	42	Plaintiff's NOTICE OF APPEAL from order entered 7-10-85 - Fee Paid Notice to USCA and Counsel 85-2440
	43	Plaintiff Attorney's Proof of Service re: Appeal
	44	Plaintiff's Proof of Service re: Appeal
1986		
Jan 29	45	Appellant's Designation of Reporter's Transcript, 3-26-85
31	46	REPORTER'S TRANSCRIPT 6-20-85
Apr 15	47	Copy of Order from USCA re: Court Reporter
May 6	48	Appellant's Amended Designation of Reporter's Transcript, 3-26-84

(end of page) see sheet "B"

(top of next page) Sheet "B" C84-1519 JPV
Civil Docket Continuation Sheet
PLAINTIFF: Rogers | DEFENDANT: Veterans

1986		
Jun 5	49	REPORTER'S TRANSCRIPT, 3-26-86 (filed in San Jose Branch, received in San Francisco on 6-18-86)
	19	Certificate of Record mailed to USCA and Counsel Reporter's Transcript's mailed to USCA - Notice to Counsel
*Jun18		RECEIVED: Copy of Letter dated 6-17-86 from Plaintiff to USCA re Reporter's Transcript

Sep 22	50	Appellees' Designation of Record on Appeal
1987		
Jan 8		File Mailed to USCA
16	51	Receipt from USCA for File
Apr 16	52	Certified Copy of Judgment from USCA: appeal is dismissed (85 2440) - Judgment of USDC is affirmed in Appeal 85-2439
23	53	Mandate Notice sent to Counsel
Apr 27	54	Certified Copy of Judgment from USCA: Judgment of USDC re: appeal 85 2439 is affirmed
May 5	55	Mandate Notice sent to counsel
Sep 9	56	Record on Appeal Returned from USCA
1992		
Jul 16	57	Plaintiff's motion for disqualification of Judge Vukasin
	58	Declaration of Service of Motion
	59	Declaration of service
Sep 8.	60	Order by Judge Vukasin denying plaintiff's motions for relief from judgment
17	61	Plaintiffs' motion to alter judgment
Oct. 9	62	Plaintiffs' Notice of Hearing re: transfer to San Jose Division hearing scheduled for 11/12/92 at 10:00
20	63	ORDER by Judge Vukasin denying plaintiffs' motion for intradistrict transfer and motion to amend judgment

FILED APR 19 1984

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
VETERANS ADMINISTRATION, et al.,
Defendants.

No. C 83-20374 WAI
JUDGMENT

In accordance with the accompanying Order, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above referenced case be, and the same hereby is, DISMISSED, each party to bear his/her own costs.

DATED: APR 19 1984

/s/ Wm A. Ingram
WILLIAM A. INGRAM
United States District Judge

LYNETTE ROGERS, *pro se*
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYNETTE ROGERS
Plaintiff-Appellant, *pro se*,
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS; et al,
Defendant-Appellees.

Case No. 92-16938
PETITION FOR WRIT OF MANDATE UNDER F.R.A.P. 27(c) BY EMERGENCY MOTION UNDER CIRCUIT RULE 27.3

Appellant now respectfully addresses this second petition to an Honorable Judge of the Ninth Circuit Court of Appeals, under F.R.A.P. 27(c). On November 24, 1992, appellant filed an EMERGENCY MOTION under Circuit Rule 27.3 (Ex. A) which was responded to by Robert Allen, Deputy Clerk, Ninth Circuit. (Ex. B). On page two of appellant's petition, para "Second", appellant informed the court that the District Court, San Francisco, "...has withheld from the record Appellant's MOTION FOR DISQUALIFICATION of the Honorable J.P. Vukasin, Jr., because of his longstanding prejudice to appellant." [Ex. C face sheet only]. A copy of the Docket Sheet (one page only) is submitted here showing that her "MOTION FOR DISQUALIFICATION OF ASSIGNED JUDGE, THE HONORABLE JOHN P. VUKASIN, Jr., ..." is <u>not entered as such on the lower Court's docket sheet</u>. [Ex. D]. (Underscore supplied.) The Ninth Circuit's ORDER dated December 4, 1992, states that: "The motion was filed July 16, 1992..." and therefore,

"...is denied." Appellant respectfully requests a judge to review the clerk's denial of this, her second motion, in light of the nature of her action, and the Ninth Circuit Clerk's error. The Order of Disqualification entered on the docket sheet is in reference to the Honorable Chief Judge, Thelton Henderson, who was the previous partner in the law firm of Rose, Remcho, and Henderson, in San Francisco. Appellant was represented by Joseph Remcho, Esq., during this period in 1977. [Ex. E]. Also, the entry dated: October 9, 1992, regarding a "...hearing scheduled for 11/12/92 at 10:00 is false. Therefore, appellant alleges this docket sheet is essentially fraudulent because of misrepresented facts.

The "Nature of Action", as alleged by appellant, is that she has been denied her civil rights. She therefore submits the following general statement only so that this broad overview does not in any way encroach on the merits of her forthcoming appeal; but it does, on the other hand, require evaluation and action on this motion by a judge of the Ninth Circuit Court. Therefore, appellant alleges that she is a victim of a protracted and continuing conspiracy by an invidious discriminatory class-based animus between federal, private agents, and state action under color of law. Defendants have infringed upon her First Amendment rights by denying her equal protection, privileges, and immunities under the Fourteenth Amendment, as well as abridging her rights under the Fourth, Fifth and Ninth Amendments to the Constitution of these United States. She has also been deprived of legally protected rights that are secured by the laws available to all. Appellant also alleges that defendants have impeded justice in the federal courts of the

United States by perjury, subornation of perjury, fraudulent concealment, alterations of material fact on government documents, as well as fraud on which her last action is grounded under civil rights laws. Appellant has been subjected to duress by governmental misconduct of federal officers of the department of Justice, thereby denying her equal protection in exercising her rights as a citizen of the United States. Therefore, for the past six (6) years, out of the most recent ten (10), she has been petitioning the courts, *pro se* to grant her relief for the injuries she sustains. In Bretz v. Kelman, (1985) 773 F.2d, 1026, the Ninth Circuit held, that:

> Court of Appeals has an obligation where petitioner is pro se, particularly in civil rights cases, to construe pleadings liberally and to afford the petitioner benefit of any doubt.

Therefore, appellant requests a mandate from this court to compel the lower court to amend its docket sheet in compliance with the actions submitted by her since the initial filing of her three motions on July 16, 1992. Furthermore, on January 11, 1993, appellant filed a NOTICE OF APPEAL in a related case: Civ. No. 83-20374 WAI. Also, appellant has no knowledge of any action taken by either the District or Appellate Court on this related appeal. The lower court has a non-discretionary duty to act on a mandate from the Ninth Circuit Appellate Court so that appellant would not be further prejudiced by the missing entry which is specifically addressed in this, her second request. This missing evidence is indispensable to her appeal pertaining to violations of her civil rights. Appellant's

opening brief is due on March 15, 1993.

Respectfully submitted.

Date: February 5, 1993.

/s/ Lynette Rogers
Lynette Rogers, Plaintiff-Appellant, *pro se*

Exhibit Attachments: "A" through "E"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYNETTE ROGERS,
Plaintiff/Appellant
v.
RICHARD L. ROUDEBUSCH,
Defendant/Appellee

No. 92-16938
DC# CV-73-739-JPV
Northern California
(San Francisco)
ORDER

Appellant's emergency motion is construed as a motion to correct the record pursuant to Fed. R. App. P. 10(e). So construed, the motion is denied. The motion was filed July 16, 1992, and appears on the district court docket sheet.

The motion is also construed in part as a motion to amend briefing and is granted. Appellant shall designate her portions of the transcript by December 10, 1992; appellee's cross-designation, if any, is due December 21, 1992; appellant shall order the transcript by December 31, 1992; court reporter shall file the transcript by February 1, 1993. Appellant's opening brief and excerpts are due March 15, 1993; appellee's answering brief is due April 14, 1993 and the optional reply brief is due 14 days from service of the answering brief.

For the Court

CATHY A. CATTERSON
Clerk of the Court

/s/ Robert Allen
Robert Allen

Deputy Clerk
Ninth Cir. R. 27-7/Appendix A,
General Orders for the United States
Court of Appeals [Filed 12/4/92]

Lynette Rogers, Plaintiff pro se
624 Cornelia Court
Mountain View, CA 94040
Telephone: (415) 967-5426
ORIGINAL FILED OCT 09 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS, et al.
Defendants.

No. C-73-0739 JPV
No. C-83-0719 JPV
No. C-84-1519 JPV
NOTICE OF HEARING
Date: November 12, 1992
Time: 10:00 a.m.
Court Room: No. 2

To defendants: Notice is hereby given that on November 12, 1992, at 10:00 a.m., in court Room No. 2, plaintiff will request the Honorable J.P. Vukasin, Jr., to transfer plaintiff's civil actions to the San Jose District before the Honorable Judge William A. Ingram, according to Local Rule 105-2(c).

Dated: October 9, 1992

Respectfully submitted,
by /s/Lynette Rogers
Lynette Rogers,
plaintiff, pro se

INTERIM
HEALTH CARE

November 17, 1994

To Whom It May Concern:

This statement is to inform you that on November 12, 1992, Lynette Rogers, RN, worked for Interim Healthcare from 3:00 p.m. to 11:00 p.m. on a nursing assignment in Sunnyvale. This information has been provided from our payroll records.

Sincerely,
/s/ Michelle Claverie, CSR
Michelle Claverie, CSR

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYNETTE ROGERS,
Plaintiff-Appellant,
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS; et al.,
Defendants-Appellees.

No. 92-16938
No. 93-15383
[Consolidated]

(N.D. Cal. Nos.
C-73-0739 JPV
C-83-0719 JPV
C-84-1519 JPV)

APPELLEES' MOTION FOR SUMMARY AFFIRMANCE

Appellant Lynette Rogers filed an opening brief, pro se, in the above consolidated appeals from the district court's order denying plaintiff's Rule 60(b)(4) motion for relief from judgment filed on September 8, 1992 anda from its order denying plaintiff's motion for intradistrict transfer and motion to amend judgment filed on October 20, 1992. On or about May 17, appellant submitted an addendum notifying the Court that her opening brief filed under No. 92-16938 is intended to apply to the consolidated appeals.

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, Appellees

move for summary affirmance of the district court's orders of september 8, 1992 and October 20, 1992. Summary affirmance is proper now that appellant's opening brief has been filed. United States v. Harris, 846 F.2d 50, 51 (9th Cir. 1988). Summary affirmance is appropriate when it is "clearly ascertainable" from a review of appellant's brief, in light of the record, that the claims are insubstantial. ID.

Summary of Argument

Ms. Rogers is a former registered nurse at the Veterans Administration Medical center in Palo alto, California (VAMC Palo Alto) who has been litigating her discharge from VAMC Palo Alto since 1973. As the record of her court actions demonstrates, appellant has been episodically forum shopping over the past twenty years, trying to revive a meritless lawsuit in the district court in san Francisco, then San Jose, then befor the United States Claims Court in Washington, D.C.

Her claims in the consolidated appeals before this court are simply another attempt to breathe life into a case that, if it ever had any merit, lost it long ago by plaintiff's failure to appeal from adverse judgments.

Standard of Review

1. Refusal of district court judge to disqualify himself may only be reversed for abuse of discretion. Arizona Past and Future Foundation, Inc.

v. Lewis, 722 F.2d 1423, 1430 (9th Cr. 1983).

2. Denial of a motion for relief from judgment is reviewed for abuse of discretion. Browder v. Director, Ill. Dep't of Corrections, 434 U.S. 257, 263 (1978).

3. Standard of review for change of venue is a narrow one; the Court of Appeals reverses only for an abuse of discretion. In Re Hall, Bayoutree Assoc., Ltd., 939 F.2d 802, 805 (9th Cir. 1991).

Facts and Procedural Background

1. Rogers First Lawsuit (1973-1977)

Ms. Rogers instituted her first lawsuit, Case. No. C-73-0739 CBR, against the Veterans Administration for civil rights and privacy violations in May of 1973 in the United States District Court in San Francisco. ER ADD at 1.[1] In 1976 the case was reassigned to the Honorable Cecil f. Poole. Id. Later that same year, Rogers filed an amended complaint, and, in December, moved for summary judgment. Id. at 3. Defendant filed an opposition to plaintiff's motion and filed a motion

---

[1] Rogers has submitted Excerpts of record (hereingafter referred to as ER) and an Addendum to appellant's Excerpts of the Record (hereinafter referred to as ER ADD), which consists of the applicable district court docket sheets. For ease of reference, Appellees will refer to the specific documents by the page number.

for dismissal or summary judgment. Id. On February 18, 1977, Judge Poole entered judgment in favor of the defendant. Plaintiff did not appeal the judgment. ER ADD at 2; ER at 12.

2. Rogers' Second Lawsuit (1983-1985

On February 15, 1983, Rogers filed a second action, No. C-83-0719 WWS, against the department of Labor's Office of Worker's Compensation Programs (OWCP). ER ADD at 6. She charged violations under the Privacy Act of 1974, 5 U.S.C. § 552a, and sought correction of purportedly erroneous documents in her records (which stemmed from her repeated disability claims with OWCP) as well as statutory damages. ER at 12-13. Although this second action was filed in San Francisco, plaintiff was represented by a San Jose attorney, Albin E. Danell. ER ADD at 6.

The district court assignment committee transferred the case from Judge Schwarzer to Judge Vukasin in October 1983. ER ADD at 7. In November 1983 Rogers filed a motion for intradistrict change of venue. ER at 99-109. defendant responded in December by filing an opposition to plaintiff's motion for intradistrict change of venue and a motion for dismissal or summary judgment. ER ADD at 8. At a January 17, 1984 hearing, Judge Vukasin orally granted summary judgment for the defendant and declared plaintiff's motion for change of venue moot. ER at 74-75. After various objections to the form of the order were resolved, the Court entered judgment for the

defendant. ER ADD at 9. Subsequently, the court filed an amended order on April 30, 1985. See Rogers v. United States Dep't of Labor, 607 F. Supp. 697 (N.D. Cal. 1985). Rogers did not appeal that order and judgment. ER ADD at 9-10.

3. Appellant's Third Lawsuit (1983-1987

In November 1983, while her second lawsuit was still in progress, Rogers sought to reopen her original 1977 action by filing a petition in the United States District Court to vacate Judge Poole's earlier ruling. ER ADD at 12-13. This third lawsuit, Case No. C-83-20374 WAI, was filed in San Jose by attorney Albin E. Danell who was also representing Rogers in the second lawsuit.

On February 13, 1984, the defendant filed a motion to dismiss, or, in the alternative, for summary judgment. ER ADD at 13. Two days later, defendant filed a notice of related case. Id. Rogers submitted her opposition to defendant's motion and a counter statement to defendant's notice of related case in March 1984. Id. Defendant's motion was taken under submission by Judge Ingram at a hearing on March 26, 1984. Id. On the same date, the case was related to C-83-0719 JPV, and given a new docket number, C-84-1519 JPV. Id.; ER at 65-66.

On April 19, 1984, Judge Ingram granted summary judgment for the defendants. ER ADD at 14; ER at 91-94, 84. The Court refused to set aside the

prior judgment as requested in Rogers' Fed. R. Civ. P. 60(b) motion. ER at 92-94. The Order and Judgment wre entered on the docket for Case No. C-84-1519 JPV. ER ADD at 14.

A year after judgment was entered against Rogers in the third lawsuit, she filed another Rule 60(b) motion. This time she sought relief from the judgment entered by Judge Ingram based on newly discovered evidence that the judgment was obtained by fraud. ER at 85-89; ER ADD at 14. On April 23, 1985, Judge Vukasin denied Rogers' application for leave to file a brief in excess of 25 pages and set a briefing schedule. Ms. Rogers submitted her brief in support of her Rule 60(b) motion on May 17, 1985. ER ADD at 14. Defendants filed an opposition to plaintiff's motion for relief and a counter motion for sanctions. Id. On July 10, 1985, Judge Vukasin denied Rogers motion for relief from Judge Ingram's April 19, 1984 order and imposed sanctions in excess of $3,800 on attorney Danell for bringing a meritless motion. ER at 98; ER ADD at 15.

Ms. Rogers filed a timely appeal from that order on August 9, 1985. ER ADD at 15. In March 1987 the Ninth Circuit affirmed the district court's order denying appellant's Rule 60(b) motion for relief from judgment. ER at 82-84; ER ADD at 16. The Court also affirmed the sanctions award against Rogers' attorney. ER at 83.

4. Rogers' Fourth Lawsuit (1987-1990)

On November 10, 1987, plaintiff

filed suit in the United States Claims Court alleging that the Veterans Administration and the Department of Labor violated her Fifth Amendment due process rights. Rogers v. United States, 15 Ct. Cl. 692, 693-94 (Ct. Claims 1988). In addition, she charged the Veterans Administration with violations of her First Amendment rights and the Freedom of Information Act, and the department of Labor with violations of the Privacy Act. Id. at 698. The Court of Appeals for the Federal Circuit affirmed the court's dismissal in an unpublished opinion issued on June 16, 1989. Rogers v. United States, 878 F.2d 1447 (Fed Cir. 1989).

On October 23, 1989, plaintiff sought to vacate the Claims Court's November 2, 1988 judgment by filing a motion under RUSCC 60(b) based on allegations of fraud. On November 16, 1990, Judge Turner denied Rogers' motion. Submitted as Attachment A to this Motion. Judge Turner wisely entered a protective order based on Rogers' propensity for repetitive litigation. The Court commented that plaintiff's motion under RUSCC 60(b) was "an obvious attempt to have the court reconsider the merits of a case which it does not have jurisdiction to entertain." Id. The government was relieved from responding to any document filed by Rogers in the Court of Claims unless requested to do so by the court. Id.

5. Additional Litigation By Rogers (1992-1993)

After being rebuffed by the Court of Claims, Rogers attempted to revive all of her closed cases in the United States District Court for the Northern District of California. She filed Rule 60(b) motions seeking relief from judgment in her original lawsuit, C-73-0739 CFP, ER at 3 and ER ADD at 4; her second lawsuit, C-83-20374 WAI [same case as C-84-1519 JPV], ER 30-34 and ER ADD at 16; and in her third lawsuit, C-83-0719 JPV, ER at 35-43; er at 10. These motions were denied on September 8, 1992 by Judge Vukasin. ER at 22 to 28[2] In the same Order, Judge Vukasin denied Rogers' motion to disqualify him. ER at 14-16.

Ms. Rogers then moved to alter the judgment and to transfer the case to San Jose. ER at 19-20. On October 20, 1992, Judge Vukasin denied appellant's motion for intradistrict transfer and Rule 50(e) motion to amend judgment. ER at 22-28. On November 10, 1992, appellant appealed the October 20, 1992 order ER at 1.

Even though case no. C-83-20374 WAI had been reassigned to Judge Vukasin in 1984 and renumber as C-84-1519 JPV, ER

---

[2] Prior to the September 8, 1992 Order, Rogers filed a motion to disqualify Judge Ware in Case No. C-73-0739 CFP. ER ADD at 4. Apparently, Judge Ware had participated in her VAMC Palo Alto grievance procedure while he was in private practice. ER at 44. Judge Ware disqualified himself from the case on August 17, 1992. ER ADD at 4. Subsequently, the case was transferred to Judge Patel and then to Judge Vukasin. Id.

ADD at 13, Rogers used the incorrect case number on her July 16, 1992, Rule 60(b) motion, ER at 30. Thus, her Rule 60(b) motion was also sent to Judge Ingram's chambers. On December 18, 1992, Judge Ingram denied appellant's Rule 60(b) motion. ER ADD at 18 (Exhibit 5). On February 5, 1993, appellant filed an amended notice of appeal. ER at 2.

Discussion

This appeal is frivolous because it is merely an attempt to relitigate her 1973 discharge from the VAMC Palo Alto. The district court did not abuse its discretion when it denied Rogers' Rule 60(b) motions, her motion for intradistrict transfer, her motion to amend the judgment, or her motion to disqualify Judge Vukasin.

1. Rogers' Motion to Recuse the Honorable John P. Vukasin Jr., Pursuant to 28 U.S.C. §§ 144 and 145, Was Wholly Without Merit.

It is well recognized that a violation of 28 U.S.C. § 144 requires that recusable bias be both personal and extrajudicial. United States v. Carignan, 600 F.2d 762, 763-64 (9th Cir. 1979). This means that the bias must be "directed against the party" and cannot arise out of judicial acts. As the Supreme Court has held, "the alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participations in the case." United States v. Grinnel Corp.,

384 U.S. 563, 583 (1966). The source of bias must be extrajudicial because the "recusal statute was never intended to enable a litigant to oust a judge for adverse rulings made, for such rulings are reviewable otherwise. . . ." Ex parte American Steel Barrel Co., 230 U.S. 35, 44 (1913).

The test for recusable bias is "whether or not given all the facts of the case there are reasonable grounds for finding that the judge could not try the case fairly, either because of the appearance or the fact of bias or prejudice." United States v. Conforte, 624 F.2d 869, 881 (9th Cir. 1980), cert. denied, 449 U.S. 1012 (1980). In light of these legal standards, Rogers' motion to disqualify Judge Vukasin was meritless. Ms. Rogers appears to be complaining about Judge Vukasin's prior rulings in her various cases. Appellant's Opening brief at 8-13. Recusal, however, is not an appropriate remedy in cases where a litigant is simply displeased with the judicial actions of a Judge.[2]

2. The Court Properly Denied Rogers' Rule 60(b) Motions

Rule 60(b) enumerates the grounds upon which a motion for relief from a

---

[2] Rogers is also displeased with the judicial reassignment committee's decisions to transfer her cases and Judge Vukasin's decision to relate all her cases pursuant to Local Rule 205-2. Appellant's Opening brief at 13-22. Neither of these actions constituted "extrajudicial" bias.

judgment may be made. It is well settled that Rule 60(b) is not merely a device to get another try at victory. In this case, Ms. Rogers should not be permitted to use Rule 60(b) to have her discharge from federal employment examined "just four more times, please."

Ms. Rogers argues that Rule 60(b)(4) applies to her case because the judgments in case numbers C-73-0739 JPV, C-83-0719 JPV, and C-84-1519 JPV are void. A motion made under subparagraph (4) requires a showing that the court that rendered it lacked jurisdiction over the subject matter, over the persons, or the court acted in a manner inconsistent with due process of law. See Watts v. Pinckney, 752 F.2d 406, 409 (9th Cir. 1985) (citing 11 Wright and Miller, Federal Practice and Procedure at 198, 200 and cases cited therein). Mere dissatisfaction with the court's judgment, or belief that the court is wrong in its decision, are not grounds for relief under subparagraph (4).

Despite almost twenty years of litigation, Ms. Rogers aruges that she has been denied a fair hearing. Appellant's Opening brief at 22-32. First Rogers received a fair hearing of the facts surrounding her discharge from the VAMC Palo Alto in case number 73-0739 JPV. She had an opportunity to take a direct appeal of the judgment in that case to this Court. She did not do so. Ms. Rogers should not be permitted to continue these belated collateral attacks on a 1977 judgment. Rogers' motion to alter the September 9, 1992

strongly a claimant may feel about the righteousness of her cause. Sterner v. United States, 2 Cl. Ct. 253 (1983). For these reasons, Ms. Rogers appeal should be denied.

DATED: August 25, 1993

Respectfully submitted,
MICHAEL J. YAMAGUCHI
United States Attorney
by: /s/Beth McGarry
Assistant United States Attorney

---

[3] Just as the resources of the court are poorly spent by reconsideration of meritless claims, so too are those of appellees. To the extent the government's resources are used defending a case brought by a litigant who shows a propensity for repetitious litigation, they are not available for the disposition of the claims of others. In these circumstances, a protective order is appropriate. Therefore, the Court may wish to consider entering a protective order directing appellees to make no response to any paper filed in this Court by Ms. Rogers under any docket number or caption unless specifically ordered to do so by the Court.

624 Cornelia Court
Mountain View, CA 94040
May 11, 1978

Mr. William L. Hicks
Chief, Personnel Service
Veterans Administration Hospital
3801 Miranda Ave.
Palo Alto, CA. 94304

Dear Mr. Hicks:

Please send me a copy of a SF-50 with my termination date on it so that I can forward this to the U.S. Civil Service Commission for a Refund of Retirement Deductions.

Thank you for your consideration in this matter.

Sincerely,

Mrs. Lynette Rogers

Veterans Administration Hospital
3801 Miranda Avenue
Palo Alto, California 94304
May 30, 1978

In Reply Refer to: 05D

Mrs. Lynette Rogers
624 Cornelia Court
Mountain View, California 94040

Dear Mrs. Rogers:

In reply to your letter of May 11, 1978, we are enclosing a blank copy of SF-2802, Application for Refund of Retirement Deductions. We cannot comply with your request for an SF-50 with your termination date as your records have been forwarded to:

National Personnel Records Center, GSA
(Civilian Personnel Records)
111 Winnebago Street
St. Louis, Missouri 63118

You may obtain the information you desire from this office upon request.

Sincerely,
/s/ William L. Hicks
WILLIAM L. HICKS
Chief, Personnel Service

Enclosure

624 Cornelia Court
Mountain View, CA 94040
February 8, 1979
(415)967-5426

Bureau of Personnel Investigations
U.S. Civil Service Commission
1900 E. Street, N.W.
Washington, D.C. 20415
Attn: Mr. Trap

Dear Sir:

Under the Freedom of Information act as amended: section 552 of Title 5, U.S. Code, I am requesting all records from my personnel file as a previous employee of the Veterans Administration Hospital, Palo Alto. I entered federal service on April 15, 1968 as a registered nurse. I was terminated by the agency in November 1975. My Social Security Number is:

549-62-6833

I am willing to pay reasonable fees for search and copying. My full name is Lynette Gertrude Rogers (nee Alberts). Thank you for your consideration in this matter.

Sincerely,

/s/ L. Rogers
Mrs. Lynette Rogers

LaDoris Hazzard Cordell
Attorney at Law
7369 University Avenue
East Palo Alto, California 94303
(415)321 3710

May 9, 1979

Office of Personnel Management
1900 E Street, N.W., Rm. 6H 30
Washington, D.C. 20415

Re: Lynette Rogers
PMR-455

Dear Ms. Akinduro:

Thank you for your communication of May 2, 1979. Please immediately release Ms. Rogers' personnel file directly to her. Her adddress is 624 Cornelia Court, Mountain View, CA 94040.

Sincerely,

/s/ LaDoris H. Cordell
LaDoris H. Cordell

LHC:saw
cc--Lynette Rogers

United States of America
Office of Personnel Management
Washington, D.C. 20415

MAY 22 1979

Mrs. Lynette Rogers
624 Cornelia Court
Mountain View, California 94040

Dear Mrs. Rogers:

This responds to your letter of February 8, 1979, referred to the Office of Personnel Management by the National Personnel Records Center, in which you requested copies of all records contained in your Official Personnel Folder (OPF).

As manager of the record system which includes most contents of the OPF, we have authority to release materials in the OPF to you. Enclosed (Tab A) are exact copies of all records permanently retained in your OPF, as prescribed by Office of Personnel Management instructions.

During the review of your OPF, we discovered several documents that are inappropriate for permanent retention therein. These documents have been removed and are also enclosed (Tab B) for your personal use.

Several medical records were found in your OPF that are inappropriate for permanent retention therein. These records originated with and remain the property of the Veterans Administration, your former employer. These records, and a copy of your original request for access, have been forwarded to the Veterans Administration for proper action (please see enclosed copy). You will be disposition of these records.

contacted directly by that office concerningI trust the enclosed material will be helpful to you.

Sincerely,

/s/ P. Ridley
for
T.R. Crotty
Chief, Office of Advisory Services
Agency Compliance and Evaluation

Enclosures

UNITED STATES GOVERNMENT
MEMORANDUM

TO: Chief, Nursing Service (118)
THRU: Clinical Coordinator, Bldg. 2

FROM: Staff Physician, Ward 2B2

SUBJECT: Incidents on Ward 2B2 regarding nursing care

1. On 12/31/62 Mrs. L. Rogers, R.N. considered patient (name blank) in poor condition and offered to his visiting wife to place him on S.I. status, to facilitate her visits. Mrs. (blank) declined this offer, but that incident caused her a great deal of worry. At no time was a physician called for medical advice.

2. On 1/1/73, according to the nursing notes by Mrs. Rogers, (patient name) again appeared in poor condition, cyanotic and cyspneic. Mrs. Rogers started nasal O_2 4 li/m and continued this treatment for about 1 hour and 40 minutes. Although a PRN order for nasal O_2 had been written, its use for this length of time without a physician's consultation was inappropriate.

3. Both of these incidents show incompetence, poor judgment and assumption of responsibilities reserved for the physician in charge.

/s/ Ernst Burian MD
ERNST BURIAN, M.D.

cc: Dr. Blume (171 PA)

G-1

VETERANS ADMINISTRATION
Department of Medicine and Surgery
Washington, D.C. 20420
6 FEB 1975
FOR OFFICIAL USE ONLY

Lynette Rogers, R.N.
Nursing Service
Veterans Administration Hospital
Palo Alto, California 94304

THRU: Director (00)
SUBJ: Proposed Discharge

1. It is proposed to discharge you from the service based on the following charges:

I. As a registered nurse you do not have authority to change a medication order without consulting the physician who wrote the order. On or about June 9, 1973, you changed a medication order written by Dr. Ernest Burian for patient (name blanked), Social Security number 554-16-8708 without consulting Dr. Burioan. The order was originally written KCL 10% 20 ml p.o.b.i.d. /c juice. You changed it by crossing out the "ml" and writing above it, "meq" so that the order read KCL 10% 20 meq p.o.b.i.d. /c juice.

II. A behavior modification plan for a patient cannot be modified or changed without consulting those personnel responsible for developing the plan. On two occasions you personally modified such plans without consulting the appropriate personnel

as follows:

A. On December 4, 1972, you modified the behavior modification plan for patient (name and social security blanked) in that you specifically gave patient (blank) a second cup of coffee. He had been eating paper products and the behavior modification plan required withholding a second cup of coffee whenever this happened. You did this without consulting the appropriate personnel.

B. On a number of occasions in the month of September 1972, you modified the behavior modification plan of patient (name and social security number blanked), that you specifically gave patient (blank) cigarettes at other than the prescribed one hour intervals as required by the behavior modification plan. You did this without consulting with the appropriate personnel.

III. Hospital Director's Memorandum number 71-89, dated November 29, 1971, Deaths, Necropsies, and seriously Ill, states that the ward physician will determine when a patient is seriously ill. You assumed this responsibility without authority in that on December 23, 1972, you informed the wife of a patient (name and social security number blanked) that you could place him on the Seriously Ill List and move him to a total care ward if she desired. This caused Mrs. (blank) to become anxious and upset about the actual condition of her husband.

IV. Since your reassignment to the position of Staff Nurse in March of 1972, you have established a pattern of assuming an investigative role that has caused apprehension among other nursing personnel as follows:

A. Between July 2, and July 5, 1972, you questioned Nursing assistants on Ward 2C2 about their job, whether they enjoyed taking care of their patients, whether they felt that their time was fair, and whether there were adequate programs with patient involvement. This caused apprehension among these personnel as they did not know why you were asking them such questions.

B. In September 1972, you questioned nursing assistants Luscious Pope and William Kinsella about whether or not they were happy. You also told the other staff members to bring their grievances to you. By these statements you caused apprehension among the nursing assistants who had the impression that you were investigating them.

2. You will be given five workdays from the date of receipt of this letter to forward a written explanation in your own behalf, if you desire, regarding the charges. To substantiate your explanation, you may submit affidavits as you desire. Your explanation will be considered carefully by the Disciplinary Board in its review of the material related to your case.

3. If you desire, you may have a hearing before this Disciplinary Board, provided you request it in writing within the same time limit specified above. at this hearing, if one is held, you may appear personally and you may produce witnesses and evidence in your behalf. If you desire, you may have a representative of your choice at the hearing to assist in presenting informatio pertaining to the charges. In the event you desire a representative, you should furnish his name and address in your reply.

4. The Disciplinary Board will recommend to the Chief Medical Director whether the charges should be sustained and the final action that should be taken. He will approve or disapprove the findings on the charges and the final action recommended. If it is the decision of the Chief Medical Director that you be discharged, your discharge will be effective not less than 30 calendar days from the day after the date of receipt of this notice.

5. No decision has been made on the above charges. any supplemental material, if submitted by you, and facts developed at a hearing, if a hearing is held, will be considered along with information already available, before a final decision is made.

/s/ Paul O. Battisti
Director, Field Operations
Region 7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
RICHARD L. ROUDEBUSH, Director, Veterans Administration; and JOHN D. CHASE, M.D., Chief Medical Director, Veterans Administration,
Defendants.

CIVIL NO. C-73-0739-CFP

POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendants contend that this action is within the exclusive jurisdiction of the court of Claims and, therefore, should be dismissed, that plaintiff's discharge was supported by substantial evidence and was not arbitrary and capricious, that the discharge board was properly constituted, and that any delay in charges was chargeable to plaintiff, not to defendants.

Dated: January 28, 1977

JAMES. L. BROWNING, JR.
United States Attorney
By: /s/ Paul J. Fitzpatrick
PAUL J. FITZPATRICK
Assistant United States Attorney

Attorneys for Defendants

Mathis v. Laird, 483 F.2d 943 (9th Cir., 1973) see also: Carter v. Seamans, 411 F.2d 767 (5th Cir., 1969); Warner v. Cox, 487 F.2d 1301 (5th Cir. ???); International Engineering Company v. Richardson, 512 F.2d 573 (D.C. Cir., 1975).

That Congress intended the Court of Claims to hear employee discharge cases such as this is apparent from the 1972 amendment to 28 U.S.C. §1491 by Public Law 92-415 which broadened the remedial powers of the Court of Claims. The 1972 amendment allows the Court of Claims to grant all necessary relief in one action in employee reinstatement cases. Public Law 92-415 added the following to the first paragraph of 28 U.S.C. §1491:

> To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. (1972 U.s. Code Congressional and Administrative News at page 749.

The Senate Report relating to Public Law 92-415 states that the purpose of the amendment "is to allow persons having monetary claims within the jurisdiction of the Court of Claims to obtain all necessary relief in one action." 1972 U.S. Code

Congressional and Administrative News at page 3117.

The Senate Report states further that:

> The primary class of cases where a broader remedy is needed are suits filed on a claim by a government employee who alleges that he was illegally discharged. At present, if the court finds that the employee was wrongfully discharged, it can award him back pay but it cannot order him reinstated to his former position. There are cases where administrative agencies refused to reinstate a wrongfully discharged employee, and it is therefore necessary for him to file an additional suit in a Federal district court to obtain reinstatement. (1972 U.S. Code Congressional and Administrative News at page 3177)

Therefore, 28 U.S.C. §1491 now allows the court of claims in an employee reinstatement case to award full and complete relief in one action, i.e., an award of back pay with reinstatement and correction of records.

The 1972 amendment to 28 U.S.C. §1491 establishes beyond question that jurisdiction over this action lies exclusively with the Court of Claims. This action must be dismissed for lack of jurisdiction.

The authorities cited by plaintiff in her points and authorities in support of this motion do not compel a contrary result. Clark v. United States, 482 F.2d 586 (8th Cir., 1973) was an action to recover the proceeds of a veterans Insurance contract in the exact amount of $10,000. Thus, the action was within the concurrent jurisdiction of the District Court and the

Court of Claims. 28 U.S.C. §1346(a)(2). In Smith v. United States, 502 F.2d 512 (5th Cir., 1974) plaintiff carefully alleged that the amount of back pay due and owing him as a result of his discharge from VA employment was $10,000. Defendants agree that the Administrative Procedure Act is a broad waiver of sovereign immunity allowing judicial review of administrative action, but only in cases where a monetary award is not sought. 5 U.S.C. §701 et seq. does not provide a monetary award remedy.

Plaintiff mentions in passing the 5th Amendment as a jurisdictional basis. No authority is cited except Clark v. United States, supra, which does not apply. Under certain circumstances Federal officials who violate a plaintiff's constitutional rights may be liable for money damages in their individual capacities. See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff does not cite, and defendant does not know of any authority for the proposition that a money award may be directed against the United States when its officers commit a so called Constitutional Tort.

This action which seeks back pay in excess of $10,000 is within the exclusive jurisdiction of the Court of Claims, Mathis v. Laird supra. Therefore, the complaint and action should be dismissed.

II. THE DECISION TO DISCHARGE PLAINTIFF FROM HER POSITION WITH THE VETERANS ADMINISTRATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND WAS NOT ARBITRARY AND CAPRICIOUS

Plaintiff's memorandum in support of her motion for summary judgment overlooks two basic principles which guide this Court's review of the Veteran Administration's decision to discharge

plaintiff. First, as stated in Toohey v. Nitze, 429 F.2d 1332, 1334 (9th Cir., 1970) "Dismissal from federal employment is largely a matter of executive agency discretion . . . . The scope of judicial review is narrow." relying on: Burke v. Carpenter, 387 F.2d 259 (9th Cir., 1967); Mancilla v. U.S., 382 F.2d 269 (9th Cir, 1967); Taylor v. U.S. Civil Service Commission, 374 F.2d 466 (9th Cir., 1967); and Charlton v. U.S., 412 F.2d 390 (3rd. Cir., 1969). Second, judicial review of agency discharge decisions is limited to a review of the administrative record. Dennis v. Blount, 497 F.2d 1305, 1309 (9th cir., 1974). As stated in Polcover v. Secretary of the Treasury, 477 F.2d 1223, 1225 D.C. Cir., cert. den. 414 U.S. 1001 (1973) suits challenging adverse personnel actions "are disposed of on the basis of the administrative record and should be governed by the principles generally applicable to judicial review of administrative action." The Court states further at p. 1226 "No de novo evidentiary hearing is permitted."

Plaintiff has knowingly violated this second rule that judicial review is limited to the administrative record by including an affidavit from a Dr. Kneitel in her moving papers. Dr. Kneitel did not testify at the administrative hearing. The inclusion of the Kneitel affidavit is improper and the affidavit should be stricken. Plaintiff's statement at p. 32 of her moving papers that "The Kneitel affidavit is, of course, offered solely on the issue of prejudice arising from the lack of a doctor on the board since the record is closed with respect to substantive claims. (Emphasis added) indicates counsels awareness of the impropriety of supplementing the record at this time. If the Court is inclined to give the Kneitel affidavit any credence at all, the defendants assert that they dispute the

facts contained in that affidavit, that they reserve the right to depose Dr. Kneitel, that they reserve the right to offer counteraffidavits, and that summary judgment is not proper because disputed issues of fact exist.

Plaintiff's contention that the charges were not supported by substantial evidence is absurd on its face given that on the second day of the hearing plaintiff admitted the most serious charge against her, the charge that she had changed a Doctor's Medication Order without first consulting with the Doctor. Plaintiff's attorney Mr. Weinberg stated at p. 233 of the Administrative record "It is stipulated with regard to Charge 1, the medication error charge, that the charge is admitted as written by Mrs. Rogers." This stipulation was not limited in scope as plaintiff's new attorney now contends. Presumably, plaintiff's attorney stipulated to the charge to keep further damaging testimony relating to that charge out of the record. Plaintiff is bound by that tactical decision. Plaintiff cannot now complain that the tactical decision backfired when the Board recommended dismissal.

With regard to the charge that plaintiff gave Marshall Long a second cup of coffee in violation of the behaviour modification plan, plaintiff admits that she gave Long the second cup of coffee. she denies knowledge of the program. The Board was not required to accept plaintiff's denials, but could reasonably find from Nurse McShan's testimony that plaintiff was present at staff meetings prior to the incident and was aware of the program. (Adm record p. 295-9) Plaintiff's contention to the contrary is an improper attempt to reargue her credibility vis-a-vis the other witnesses.

Plaintiff admits in her moving papers that she gave Mr. Duggle [name is unclear on

text] cigarettes at other than the prescribed intervals. She admits knowledge. (See p. 18, Plaintiff's Memorandum) She simply contends this was not a behaviour modification plan. In effect, she now admits this charge, but disparages the seriousness of it.

With regard to the investigative role charge there is little dispute as to the facts. Plaintiff was a disruptive force at the Veterans Administration hospital. The record clearly shows the problems created by her inability to get along with her fellow workers. The testimony of Mr. Rouse is a good example of the difficulties caused by plaintiff's severe personality problems. (See adm. record p. 25-9, 44-6.)[1/]

Plaintiff's basic contention is that the decision to discharge her was too severe. However, dismissal was within the range of permissible sanctions. The appropriate sanction is peculiarly within the discretion of the agency, and is not subject to review. As stated in Rodrigues v. Seamans, 463 F.2d 837 (D.C. Cir., 1972) at p. 842, "this court has no power to review penalties of this nature where the action is justified. We may not have imposed the same penalty on appellant but that was a determination to be made by the General, in his sound discretion."

Plaintiff was not simply exercising her professional judgment. She usurped the role of a physician. She disregarded behaviour modification plans set for extremely difficult brain damaged patients, and she became a disruptive influence at the Veterans Administration hospital. Her discharge was fully warranted

---

[1/] Gilbert v. Johnson, 419 F. Supp. 859 N.D. Ga. (1976) indicates that an employee may be discharged when personality problems interfere with the employee's ability to do his or her work. Gilbert also discusses

thoroughly the procedural requirements and the specificity necessary in drafting the statement of charges in such a case.

III. THE DISCIPLINARY BOARD WAS PROPERLY CONSTITUTED PURSUANT TO MP-5, PART II, CHAPTER 8, SECTION C, AS AMENDED BY THE ADMINISTRATOR ON MAY 8, 1974

Plaintiff contends that the VA violated its own regulations by failing to have a physician serve on plaintiff's disciplinary board. This contention was not raised at the administrative hearing by plaintiff's prior attorney.

Plaintiff's present lawyer apparently is working from an out of date version of the VA Personnel Manual. The rule that a physician must sit on nurses' disciplinary boards was changed on May 8, 1974 to provide for peer review. It was felt fairer to nurses to have a nurse rather than a physician set as Chairperson of boards hearing charges against nurses.

On May 3, 1974, the Chief Medical Director, John d. Chase M.D., by Memorandum to the Administrator, Donald E. Johnson, recommended a change in chairmanship of Disciplinary Boards which would provide that the chairman of each Disciplinary Board will be of the same service as the employee involved. The Administrator approved the change on May 8, 1974 (see Exhibit A).

Section 210(b) of Title 38, U.S.C., provides in pertinent part:

The Administrator, under the direction of the President, is responsible for the proper execution and administration of all laws administered by the Veterans Administration and for the control, direction, and management of the veterans Administration.

On October 10, 1974, the Chief Medical Director, John D. Chase, M.D., by his

Memorandum No. 10-74-18, selected the Chairman, DM&S Central Office Boards. The Chairman, Disciplinary Board for Nurses, was Miss H.E. Wysocki, and her alternate was Mrs. D.S. Humes. (See Exhibit B.)

The administrative record relating to plaintiff's removal action held June 18-20, 1975 will show that Mrs. D.S. Humes was the chairman and presiding officer of plaintiff Rogers' removal hearing, and that the Disciplinary Board was properly composed of three (3) nurses.

Plaintiff's contention raised for the first time in this court is based on a regulation which had been revoked prior to plaintiff's hearing.

IV THE DELAY IN BRINGING CHARGES AGAINST PLAINTIFF WAS DEMANDED BY PLAINTIFF'S OWN ATTORNEY SO THAT PLAINTIFF COULD PROCESS A GRIEVANCE WITHOUT BEING DISCHARGED. THE DELAY IS CHARGEABLE TO PLAINTIFF NOT TO DEFENDANT

Plaintiff contends that the passage of time from the incidents on which her discharge was based to February 7, 1975 when she received a letter of proposed discharge violated her right to due process under the Constitution. Plaintiff fails to inform this Court that virtually the entire delay was done at the request and indeed the insistence of her prior attorney.

Plaintiff's original complaint was filed on May 3, 19793. Stripped of its hyperbole, plaintiff's complaint stated that she had been promoted to head nurse of the Medical and Dermatology Ward 1B5 on January 15, 1971. About ten months later, on November 16, 1971, certain of her staff nurses gave her an unsigned document which charged her with incompetence. An informal meeting with her nurses did not work out, and the staff nurses took their complaints about plaintiff to the Chief nurse.

Plaintiff demanded the right to a grievance hearing on their charges. The grievance procedure apparently was the result of union-Veterans Administration Contract. The complaint contends that an informal grievance hearing was held on December 9, 1971, but instead of a proper decision being rendered, a so called "December 10, 1971 Memorandum" was issued which repeated the charges of incompetence.

The relationship between plaintiff and other VA personnel apparently deteriorated so that on march 18, 1972, plaintiff was reassigned from her position as head nurse to a position of staff nurse without reduction of salary or grade, but in a different building.

Plaintiff's complaint in essence contended that she had a right to a grievance hearing to resolve the numerous issues relating to her March 1972, reassignment. In addition, the complaint demanded money damages from several VA staff personnel in their individual capacities for varied claimed libels.

The relief demanded in the complaint, relevant to the delay issue was:

First, an injunction compelling a grievance hearing.

Second, an injunction prohibiting any adverse personnel action against her. See p. 17 of May 3, 1977 complaint.

At the hearing on plaintiff's motion for preliminary injunction held before Judge Renfrew on September 4, 1973, the parties first agreed that a grievance hearing would be held. Prior to recess the following took place between Mr. Ware, plaintiff's attorney, Mr. Chang, the assistant United States attorney, and the Court:

> MR. WARE: Now, Your Honor, there is one final aspect of the case, and I hesitate to bring this up, but our motion this morning was for a

preliminary injunction.

THE COURT: Yes?

MR. WARE: Now, I don't want this hearing to be construed as a disciplinary board hearing which the plaintiff is accorded prior to termination -- that this is separate and independent.

The reason our motion was made was to stay all proceedings, so they could not take this final step toward terminating her, and if my motion is granted, that would have the effect of halting all proceedings save this one.

I just want it clear that this is not a disciplinary board hearing, but rather a grievance hearing so the plaintiff does not get in a position of being terminated at the end of that.

MR. CHANG: The problem with that is we oppose the motion for preliminary injunction. We have made this offer with respect to a hearing under the motion aspect.

THE COURT: Let me say this, Mr. Ware. With respect to the problem you foresee, and I think you are very competent to foresee it, on the basis of the representation made by Mr. Chang, there is advance notice given, and if such action were taken, I would certainly entertain a motion for an injunction with an order shortening time, so --

MR. WARE: Fine.

THE COURT: There shouldn't be any problem there.

MR. WARE: Fine.

Thus, on September 4, 1973, the VA was informed in no uncertain terms that if they attempted to discharge plaintiff prior to

completion of the agreed upon grievance hearing, the Court would issue an injunction prohibiting her discharge.

The grievance procedure was finally completed after appeals by plaintiff on september 29, 1974. (See affidavit of Raymond J. Neal filed in this action on February 11, 1975, with attached letter from Mr. Roudebush.)

The delay from September 29, 1974 to february 7, 1975 is the only delay chargeable to the defendant. This four month delay is not unreasonable.

Plaintiff did not raise the issue of delay at the administrative hearing. Plaintiff points to no real prejudice such as lost witnesses or lost documents caused by the delay. Plaintiff's citation of criminal cases involving the Constitutional rights to speedy trial and due process are not applicable here.

Since the delay was primarily due to plaintiff's choosing, plaintiff has waived any right to object for the first time in this Court.

V CONCLUSION

For these reasons, we request that the complaint and action be dismissed or alternatively that defendants be granted summary judgment.

Dated: January 28, 1977

Respectfully submitted

JAMES L. BROWNING, JR.
United States Attorney
/s/ Paul J. Fitzpatrick
Assistant United States Attorney
Attorneys for Defendants

LYNETTE ROGERS, pro se
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA [SIC]

LYNETTE ROGERS,
Plaintiff, pro se

v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS; et al; RALPH M. HARTMAN, DIRECTOR OF WORKERS' COMPENSATION PROGRAM; GERALD T. CULLEN, DEPUTY COMM., et al.,

Defendants

Civ. No. C-94-16253
AFFIDAVIT

I, LYNETTE ROGERS, declare:

That I am the appellant in the above-captioned case, and have personal knowledge of the following:

1. After the Hearing on February 17, 1977, before the Honorable Judge Cecil Poole, counsel, Joseph Remcho, James Connolly, an R.N. friend, and I went to the Federal Building cafeteria for coffee.

2. I asked counsel why he did not defend his position with respect to the Disciplinary Board members.

3. I was told by him the government had submitted its response and claimed that the composition of the membership of the Board had changed

because we were working with out-dated regulations.

I declare that the above is true and correct to the best of my knowledge, and do so under penalty of perjury by the laws of the State of California on this day of September 9, 1994.

LYNETTE ROGERS, pro se

[Notarized by Long Fa Hwang on 9/9/94]

OUSTER OF VA CHIEF URGED

Three key congressmen and two of the three major veterans orgainizations have called for the resignation of Donald E. Johnson, director of the Veterans Administration.

They charge incompetence and inefficiency as reasons for his dismissal; and have asked President Nixon to act immediately.

President Nixon announced March 31 that he had commissioned a cabinet level task force, headed by Johnson to explore accusations of bureaucratic mismanagement. He wants a reqport from the group in 60 days.

Under Johnson are Secretary of Defense James R. Schlesinger, Secretary of Labor Peter J. Brennan, Caspar Weinberger, secretary of Health, Education and Welfare and Roy L. Ash, director of the Office of Management and Budget.

This White House action has failed to satisfy Sen. Alan Cranston, D-Calif., Rep. Olin E. Teague, second ranking member of the House Veterans Affairs Committee and Rep. Jerome R. Waldie, D-Calif., chairman of the sub-committee on retirement and employee benefits.

Nor has it quelled criticism from the veterans of Foreign Wars or the Disabled American veterans orgainizations.

John Soave, DAV national commander, and Ray R. Soden, commander-in-chief of the VFW, both agree with the congressmen and want Johnson removed.

The largest veterans group, the American Legion with 2.7 million members, 500,000 of whom are Vietnam veterans, is maintaining a "wait and see" posture, a spokesman explained.

He said the Legion wants to see the task force report first before taking any concrete stand.

So far, VA's top management appears to be in chaos.

Dr. Marc J. Musser, chief of VA's department of medicine and surgery, has turned in his resignation. Although it is not official, a VA spokesman said Musser's resignation request is on Johnson's desk.

Johnson and Musser have been tangling

over medical policy. Pressure from elsewhere saved Musser from being forced out only last year.

Acting director of the DMS is Howard W. Kenney. It is not klnown if he will take Musser's place permanently, a VA official said.

There is not even a whisper of who might move into Musser's office.

The VA shakeup is said to stem from late benefit checks to veterans, medical mismanagement and budget constraints.

Critics, among them Vietnam veterans who have been loggying Capitol Hill and demonstrating around Washington for weeks, say the VA budget is too skimpy, medical services are poor and tough to secure and that they have been receiving their benefit checks late.

They also charge that the DMH has been stingy with funds.

The Capitol Hill and Veterans forces are moving steadily toward the White House and a showdown is certain, according to officials on the Hill and in the veterans organizations.

President Nixon ordered Johnson to "personally" visit VA hospitals to see if these charges are true.

"Of course, this is not the first time Johnson has been around these medical centers. He visits them regularly," a VA spokesman said.

Meanwhile, the General Accounting Office has attacked VA's spinal cord injury procedures.

In a March 20, 1974 report (B-133044), GAO, financial watchdog for Congress, said:

"Spinal cord injury patients-- particularly servicemen-- were not being transferred to VA specialized treatment centers as soon as medically feasible.

"Therefore, many patients incurred medical complications which slowed their rehabilitation, lengthened their hospitalization, and increased the cost of health care."

GAO recommended a revamping of spinal cord treatment procedures.

DECLARATION OF LYNETTE ROGERS

I, LYNETTE ROGERS, declare:

I am the plaintiff in Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts:

1. After the court Hearing in 1977, I consulted the following attorneys by either personal visits, correspondence and/or telephone during the period of time listed below for the purpose of determining my legal rights and status, and to clear my records of all the polluted material retained by agents of VAPA and DOL. These attorneys are as follows:

(a) Alan Schlosser, San Francisco, January 11, 1979

(b) Thomas J. Ferrito, Los Gatos, February 23, 1979

(c) LaDoris Hazzard Cordell (now Judge), Palo Alto, May 9, 1979

(d) Robert Vezzolini, San Jose, January 25, 1980-1981

(e)Bruce Ahnfeldt, San Jose, March 5, 1982

(f) Frank E. Mayo, Mountain View, March 17, 1982

(g) Philip Griego, San Jose, March 10, 1982

(h) Albin E. Danell, Los Altos, April 27, 1982

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on November 10, 1992, in Mountain View, California

/s/ Lynette Rogers
Lynette Rogers, plaintiff pro se

DECLARATION "L" OF LYNETTE ROGERS

Original filed FEB 13, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff
v.
VETERANS ADMINISTRATION, RICHARD L ROUDEBUSH, DIRECTOR, VETERANS ADMINISTRATION; and JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR VETERANS ADMINISTRATION,
Defendents.

Civil No. C-83-20-374 WAI
Declaration of Paul Dugan
Dated February 13, 1983

DECLARATION OF PUAL DUGAN

I, Paul Dugan declare:

I am the Employee Relations Officer for the Veterans Administration Medical Center in Palo Alto, California. In this capacity, I advise hospital personnel of regulations, rules and practices affecting employee relations, including those related to disciplinary actions against professional employees, such as nurses.

On May 3, 1974, the Chief Medical Director of the Veterans Administration, who at that time was John D. Chase M.D., recommended to the administrator of Veterans Affairs, who was Donald Johnson, that the Chairman of Disciplinary Boards should be of the same service as the involved employee. This recommendation of Dr. Chase was accepted and approved by the Administrator on May 8, 1974.

While the text of MP-5, Part II, Ch 8, Section C has not been changed, this ammendment by the Administrator which is contained in a memorandum dated May 3, 1974, (Exhibit A), was given immmediate

effect by its express terms and remains in effect today.

Such an amendment is within the authority of the Administrator pursuant to 38 U.S.C. 210(b).

I declare under penalty of perjury that the foregoing statements are true and correct.

/s/Paul Dugan
Employee Relations Officer
February 13, 1984

(POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELIEF FROM SUMMARY JUDGMENT - From Extended Brief)

TABLE OF CONTENTS

		Page
TABLE OF AUTHORITIES		iv
FACTS		1
ARGUMENT		4
I.	PLAINTIFF'S NEWLY DISCOVERED EVIDENCE CLEARLY DEMONSTRATES DEFENDANT COMMITTED A FRAUD UPON THE COURT IN THE 1977 SUMMARY JUDGMENT HEARINGS, WHICH WAS REPEATED AT THE HEARING BEFORE JUDGE INGRAM ON MARCH 26, 1984, FOR DEFENDANT KNEW AT ALL TIMES THAT THE MEMORANDUM ALONE COULD NOT LEGALLY CHANGE THE MEMBERS OF THE DISCIPLINARY BOARDS.	4
	A. Defendant's Efforts in 1976 To Lobby Congress For a Bill Enacting The Contents Of The Memorandum Failed.	5
II.	THE ADMINISTRATIVE PROCEDURES OF TITLE 5 UNITED STATES CODE, SECTION 552(a), et seq. REQUIRE THAT ANY CHANGES IN THE COMPOSITION OF VA DISCIPLINARY BOARDS TO HAVE BEEN PUBLISHED IN THE FEDERAL REGISTER BEFORE THEY COULD HAVE ADVERSELY AFFECTED PLAINTIFF.	7
	A. Policy Behind Section 552	7
	B. Statutory Authority.	7
III.	PUBLICATION OF THE CHANGE IN COMPOSITION IN THE VA DIS-	

CIPLINARY BOARDS WAS REQUIRED UNDER SECTION 552. 8

IV. THE ADMINISTRATIVE "RULE-MAKING" PROVISIONS OF 5 U.S.C. SECTION 553 REQUIRED THE DEFENDANT TO HAVE PROVIDED INTERESTED PERSONS AN OPPORTUNITY TO PARTICIPATE IN ANY RULE-MAKING AMENDMENTS FOR CHANGING THE COMPOSITION OF VA DISCIPLINARY BOARDS. 9

A. Statutory Authority. 10

B. Exceptions To Section 553 Are Not Applicable. 10

C. Administrative Procedure Act, Sections 552 And 553 Applied To The VA 17

D. The VA's Change In Composition Of Its Disciplinary Board Is Void. 17

V. THE DEFENDANT'S MAY 3, 1974 MEMORANDUM WAS VOID FOR IT FAILED TO COMPLY WITH THE PROVISIONS OF EXECUTIVE ORDER 11491. 18

VI. THE DEFENDANT'S MAY 3, 1974 MEMORANDUM WAS NEVER IMPLEMENTED ON A NATIONWIDE BASIS AND WAS THUS USED SELECTIVELY AGAINST PLAINTIFF. 19

VII. THE PROPRIETY OF THE ADMINISTRATOR'S DECISION TO AMEND THE COMPOSITION OF THE VETERANS ADMINISTRATION'S DISCIPLINARY BOARDS FOR NURSES, AND HIS MEMORANDUM IMPLEMENTING THIS CHANGE IS REVIEWABLE BY THIS COURT. 21

VIII. DEFENDANT'S ACTIONS CONSTITUTED A CONSPIRACY TO DEPRIVE PLAINTIFF OF HER RIGHTS TO DUE PROCESS AND EQUAL PROTECTION AND

IMMUNITIES UNDER THE LAW IN VIOLATION OF 42 U.S.C. SECTION 1985(3). 30

A. Statutory Elements Of A Cause Of Action Under 42 U.S.C. Section 1985(3). 30

B. Facts Supporting The Conspiracy To Remove Plaintiff From Federal Service. 31

C. Background Facts Supporting Plaintiff's Status As A Whistleblower. 36

D. Plaintiff Was Deprived Of A Legally Protected Right. 38

IX. DEFENDANT'S CIRCUMVENTION OF THE VA'S GRIEVANCE PROCEDURE DENIED PLAINTIFF THE RIGHT TO FILE A GRIEVANCE AND THE RIGHT TO REPRESENTATION. 39

X. CIRCUMVENTION OF THE VA'S REGULATORY PROCEDURES UNDER DM&S SUPPLEMENT, MP-5, PART II, CHAPTER 6, PROFICIENCY RATING SYSTEM, DENIED PLAINTIFF DUE PROCESS OF LAW. 42

XI. MISREPRESENTATION AND MANIPULATION OF THE VA'S REGULATIONS UNDER DM&S SUPPLEMENT, MP-5, PART II, TRANS. 9, CHAPTER 8, DISCIPLINARY ACTIONS, GRIEVANCES AND HEARINGS, DENIED PLAINTIFF A RIGHT TO A HEARING. 45

XII. DEFENDANT'S MISCONDUCT REGARDING THE NATURE OF HER REASSIGNMENT DEFRAUDED BOTH PLAINTIFF AND THE COURT ON JULY 24, 1974, WHICH PREVENTED HER FROM PRESENTING HER CASE IN COURT. 47

XIII. DEFENDANT'S MANIPULATION OF THE LOCAL PROCEDURES ESTABLISHED BY THE HOSPITAL DIRECTOR TO ADDRESS NURSES' COMPLAINTS ARISING FROM CHANGES IN DUTY ASSIGNMENT IS FURTHER EVIDENCE OF THE CONSPIRACY. 51

XIV. MANIPULATION OF THE VA'S REGULATORY PROCEDURES, DM&S SUPPLEMENT, MP-5, PART II, CHAPTER 8, DISCIPLINARY ACTIONS, GRIEVANCES AND HEARING, SECTION B, PENALIZED PLAINTIFF FOR EXERCISING HER CONSTITUTIONALLY PROTECTED RIGHTS. 53

CONCLUSION 63

EXPLANATION OF H.R. 5691

This bill amends Title 38 of the United States Code in order to allow the Administrator of Veterans' Affairs to delegate to the Chief Medical Director in the Department of Medicine and surgery authority to act upon the recommendations of the disciplinary boards provided by section 4110 of title 38, United States Code, in the cases involving physicians, dentists, and nurses.

Present law provides that the Chief Medical Director shall appoint disciplinary boards to determine, after notice and fair hearing, the correctness of charges of inaptitude, inefficiency, or misconduct of physicians, dentists, and nurses. The chairman and secretary, however, are appointed directly by the Administrator. Recommendations are made by these boards to the administrator for approval and action. The present bill would permit the Chief Medical director to appoint the entire membership of the board, and to receive and act upon the recommendations of such board, with the employee facing disciplinary action afforded the right of appeal to the Administrator. This legislation is intended, among other things, to correct, as an example, a situation wherein a staff nurse who has been found guilty of misconduct and is slated for demotion, suspension, or discharge, must have such action personally approved by the Administrator, whereas authority to take similar disciplinary action in the case of higher ranking employees in the competitive service can be taken at lower administrative levels.

MOTION NO. 1

TABLE OF CONTENTS

	Page(s)
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii-v
APPENDIX-INDEX	vi-x
PRELIMINARY STATEMENT TO PLAINTIFF'S FIRST MOTION	1
STATEMENT OF FACTS	2
AMENDMENTS TO ORIGINAL PLEADING ARE PERMITTED UNDER 28 U.S.C.A. F.R.C.P. Rule 15(c)	3
ARGUMENT	7
I. The Judgment Entered in Civ. No.73 No.-0739 CFP, on February 17, 1977,Void for Lack of Subject-Matter Jurisdiction under Rule 60(b)(4).	7
A. The VA has no Legal Authority to Hire Unlicensed Physicians to Clinically Manage the Medical Care of Veterans.	8
B. Can Plaintiff`s Discharge be Justified on the Basis of an Unlicensed Physician`s Orders that are Perpetrated by Fraud?	11
C. The Alleged Disciplinary Board Deprived Plaintiff to a Fair Consideration of Continued Public Employment under the Fourteenth Amendment on Illegal and Fraudulent Medical Orders.	13

D. Plaintiff was Improperly Removed from Federal Service by Defendants VAPA`s Intentional Discriminatory Conduct. 15

SUMMARY 18

PRAYER FOR RELIEF 20

APPENDIX-INDEX 1-202

CERTIFICATE OF SERVICE

TABLE OF CONTENTS

	Page(s)
TABLE OF CONTENTS	i-ii
TABLE OF AUTHORITIES	iii-vii
APPENDIX-INDEX	viii-xiv
PRELIMINARY STATEMENT TO PLAINTIFF`S THIRD MOTION	1
AMENDMENTS TO ORIGINAL PLEADING ARE PERMITTED UNDER 28 U.S.C.A. F.R.C.P. RULE 15(c)	3
ARGUMENTS	6
A. Defendants DOL and VA Conspired to violate Plaintiff`s Due Process Rights Under the Fourteenth Amendment by Fraud and Obstruction of Justice.	7
B. Plaintiff`s Right to Privacy was Invaded by Dr. R. Burr, on Behalf of Conspirators VA and DOL.	10
C. Defendants VA and DOL, by CLASS-BASED MOTIVATING ANIMUS Used Information from Agents, Under Color of State Law, for the Purpose of Inflicting a Separate Injury Upon Plaintiff Through a Community-based Psychiatrist.	12
STATEMENT OF FACTS	15
A. Defendant VAPA Engaged in the First Conspiracy After Her Ninety-Day Temporary Appointment.	15
B. Defendants` Preparation for Second Conspiracy.	16
C. Defendants` Subordinates Engage in Second Conspiracy.	16

MOTION NO. 3

D. Plaintiff Received Another Unjustified Personnel Action. 18

E. Petition for Interim Relief Before Final Agency Action. 18

F. Defendants Engage in a Third Conspiracy by Concerted Action. 19

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CECIL F. POOLE

LYNETTE ROGERS,
PLAINTIFF
-VS-
RICHARD L. ROUDEBUSH, DIRECTOR, VETERANS ADMINISTRATION; AND JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS ADMINISTRATION,
DEFENDANTS

NO. C-73-0739-CFP

REPORTER'S TRANSCRIPT

FEBRUARY 11, 1977

REPORTED BY: CARL R. PLINE, C.S.R.

A P P E A R A N C E S:

FOR THE PLAINTIFF:

JOSEPH REMCHO, ESQUIRE
M. DIANE WEBER, ESQUIRE
ROSEN, REMCHO, & HENDERSON
155 MONTGOMERY STREET, SUITE 1502
SAN FRANCISCO, CALIFORNIA 94104

FOR THE DEFENDANTS:

JAMES L. BROWNING, JR., ESQUIRE
UNITED STATES ATTORNEY
BY: PAUL J. FITZPATRICK, ESQUIRE
ASSISTANT UNITED STATES ATTORNEY
CIVIL DIVISION
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

FRIDAY, FEBRUARY 11, 1977 MORNING SESSION

THE CLERK: CIVIL CASE NUMBER 73-739, LYNETTE ROGERS VERSUS RICHARD ROUDEBUSH, ET AL.

COUNSEL, STATE YOUR APPEARANCES.

MR. REMCHO: GOOD MORNING, YOUR HONOR.

JOSEPH REMCHO AND DIANE WEBER FOR THE PLAINTIFF.

MR. FITZPATRICK: PAUL FITZPATRICK FOR THE DEFENDANTS, YOUR HONOR.

GOOD MORNING.

THE COURT: WELL, I .... I SUPPOSE AT THE OUTSET I HAVE TO DECIDE WHETHER OR NOT TO .... TO HOLD THAT THE TUCKER ACT OUSTS THE COURT OF JURISDICTION; OR THAT YOU CAN WAIVE THE EXCESS OVER TEN THOUSAND DOLLARS, AND THEN JURISDICTION REMAINS HERE.

I DON'T KNOW. I AM INCLINED NOT TO -- YOU KNOW, IF THERE'S A POSSIBLE BASIS OF JURISDICTION, I'M INCLINED TO THINK THAT WE OUGHT TO JUST KEEP IT.

SO I THINK YOU OUGHT TO BE ALLOWED TO WAIVE THE EXCESS.

MR. REMCHO: AND, YOUR HONOR, THERE IS, OF COURSE, AN ALTERNATIVE; AND THAT IS I BELIEVE THAT THERE IS AN INDEPENDENT BASIS OF JURISDICTION AND THAT WE ARE NOT REQUIRED TO WAIVE THE EXCESS.

THE COURT: UNDER WHAT?

MR. REMCHO: AS I UNDERSTAND THE -- THE ALTERNATIVE BASIS OF THE JURISDICTION WOULD BE UNDER 1331, A FEDERAL QUESTION IN WHICH THE AMOUNT IN CONTROVERSY EXCEEDS TEN THOUSAND DOLLARS, WHEN IT'S FOUNDED ON FEDERAL STATUTE --

THE COURT: NO, I DON'T THINK SO. I DON'T THINK THE GENERALITY OF THAT SECTION OVERCOMES THE SPECIFIC INTENDMENT OF THE COURT OF CLAIMS ACT.

MR. REMCHO: I THINK THE CASES DO, YOU HONOR, WHERE -- WHERE YOU HAVE NOT JUST 1331, GENERALLY, AND TEN THOUSAND

THE COURT: WELL, MAYBE YOU HAVE IT UNDER TEN.

ARE YOU -- YOU ARE CONTENDING FOR OVER TEN?

MR. REMCHO: THAT'S RIGHT, YOUR HONOR.

THE COURT: NO. I THINK WE -- I DON'T AGREE WITH THAT.

SO THAT YOU GET IT CLEAR, I'LL MAKE A RULING THAT JURISDICTION; IF YOU INSIST UPON THE EXCESS, THEN I'M GOING TO HOLD THAT YOUR -- THE COURT IS OUSTED FROM JURISDICTION BY VIRTUE OF THE COURT OF CLAIMS ACT.

YOU CAN TAKE -- YOU CAN MAKE A DECISION NOW.

MR. REMCHO: ON THAT UNDERSTANDING, YOUR HONOR, WE WAIVE THE EXCESS.

THE COURT: WHICH THEN BRINGS US TO THE .... TO THE QUESTION OF THE MOTION.

HOW DO YOU REGARD THE CHARGE -- AND THE EVIDENCE RELATING TO THE CHARGE WAS THAT THE NURSE ON HER OWN AUTHORITY CHANGED THE MEDICATION PRESCRIBED BY THE DOCTOR; AND, APPARENTLY, AS I UNDERSTAND THE RECORD, DIDN'T GET -- DIDN'T GET ANYBODY'S APPROVAL; BUT THIS WAS HER OWN IDEA. AND THERE'S EVIDENCE OF THAT.

NOW, CONCEDING, YOU KNOW, THAT -- THAT SHE GAVE HER VERSION OF IT, THE STANDARD I THINK I WOULD LOOK AT WOULD BE WHETHER OR NOT THE RECORD CONTAINS SUBSTANTIAL EVIDENCE IN SUPPORT OF THE ADMINISTRATORS DECISION. ISN'T THAT IT?

MR. REMCHO: I -- I HAVE NO -- THAT'S CLEAR, YOU HONOR.

WE HAVE TWO RESPONSES TO THAT. FIRST, IS THAT IT .... THERE IS -- FIRST OFF, THERE'S NOTHING IN THE RECORD PUT IN BY THE AGENCY WHICH SAYS THAT A NURSE IS REQUIRED TO CHECK WITH THE DOCTOR. IT SEEMS TO ME THAT IT'S THE OBLIGATION OF THE AGENCY TO PUT THAT EVIDENCE IN TO SUSTAIN A DECISION TO TERMINATE.

THERE'S NOTHING -- THERE'S NO REGULATION IN THERE WHICH SAYS THAT SHE HAS TO CHECK WITH THE DOCTOR.

NOW, IN FACT, IT'S CLEAR FROM THE

RECORD THAT EVERYONE ASSUMED THAT. AND I -- I WILL ASSUME --

THE COURT: YOU MEAN THAT -- ARE YOU SAYING -- THE DOCTOR PRESCRIBED SOMETHING FOR A PATIENT.

MR. REMCHO: THAT'S CORRECT.

THE COURT: AND YOU MEAN THAT A NURSE CAN COME ALONG AND SHE CAN CHANGE THAT?

MR. REMCHO: I'M JUST SAYING --

THE COURT: I'M LYING IN THE BED THERE; THE DOCTOR SAYS: I WANT YOU TO HAVE X, Y, OR Z.

AND THE NURSE COMES ALONG AND SHE DOESN'T THINK THAT'S A GOOD IDEA, SO SHE GIVES ME SOMETHING ELSE?

MR. REMCHO: WELL ... I'M NOT SAYING THAT, YOUR HONOR. I'M JUST MAKING --

THE COURT: IT FRIGHTENS ME TO HAVE YOU TELL ME THAT.

MR. REMCHO: I'M NOT SAYING THAT, YOUR HONOR; I'M JUST MAKING THE TECHNICAL POINT, THOUGH --

THE COURT: WELL, I KNOW; BUT THE RECORD --

MR. REMCHO: THERE'S NOTHING IN THE RECORD ON THAT.

THE COURT: LET'S LOOK AT THAT TECHNICAL POINT.

THIS WOULD BE A TREMENDOUS RESPONSIBILITY FOR -- I'M NOT SAYING THAT THERE -- THAT THERE AREN'T -- MANY NURSES DON'T HAVE THE DEGREE OF COMPETENCE THAT, YOU KNOW, MIGHT REFLECT UNFAVORABLY UPON ... THE STATE OF -- THE KNOWLEDGE OF THE ART OF THE DOCTORS. THAT ISN'T REALLY THE POINT.

SOMEBODY HAS GOT THEM IN THERE. AND IF THIS PHYSICIAN ISN'T CAPABLE OF DOING HIS JOB, THEN SOMEBODY ELSE IS NEGLIGENT.

BUT, I MEAN, I DON'T SUPPOSE THAT WE CAN TOLERATE A SITUATION WHERE YOU HAVE CERTAIN STAFF FUNCTIONS THAT TRADITIONALLY ARE IMPOSED BY THE PROFESSION; ONE OF THOSE

BEING THE RESPONSIBILITY. THAT'S WHERE THE RESPONSIBILITY IS, FOR THE PHYSICIAN TO MAKE THE -- THE DOCTORS MAKE THEM.

AND THE NURSE HAS A LOT OF THINGS SHE HAS TO DO. AND THERE'S A LOT OF THE AREAS IN WHICH SHE HAS A TREMENDOUS AMOUNT BOTH OF LATITUDE, AND DISCRETION, AND RESPONSIBILITY.

BUT I -- I NEVER, ALTHOUGH I WON'T SAY IT'S IMPOSSIBLE -- I WOULD SAY THAT .... THAT, NORMALLY, YOU WOULD NOT EXPECT THAT THE DISCIPLINE OF THE PROFESSION WOULD TOLERATE THE CHANGING OF THE DOCTOR'S ORDERS, WITHOUT MORE, BY -- BY THE NURSE. UNLESS YOU HAD A SITUATION WHICH -- I GUESS OF AN EMERGENCY NATURE, WHERE JUDGMENT IS CALLED UPON, WHETHER OR NOT YOU KNOW, THERE'S A MISTAKE, OR WHETHER OR NOT THE SITUATION HAS CHANGED, AND YOU DON'T HAVE TIME TO GET THEM. I DON'T KNOW. BUT --

MR. REMCHO: NOW, WE ARE NOT ASSERTING THAT SHE NOT OUGHT TO HAVE.

I WAS JUST MAKING THE TECHNICAL POINT THAT THERE'S NOTHING IN THE RECORD ON IT.

THE COURT: WELL ... I THINK THAT'S .... ALL RIGHT.

MR. REMCHO: WE TRY TO MAKE TECHNICAL POINTS, AS WELL, YOU HONOR.

THE COURT: ALL RIGHT. YOU MADE YOUR TECHNICAL POINT THAT --

MR. REMCHO: THERE'S NO --

THE COURT: -- THE RECORD DIDN'T DELINEATE THAT WITH SPECIFICITY. I'LL SAY ... THAT.

MR. REMCHO: LET ME GO ON WITH THE -- THE REAL POINT. THAT IS, YOUR HONOR, THAT ... SHE TESTIFIED -- THERE'S NO DISPUTE IN THE RECORD AT ALL TO THE FACT THAT THE DOCTOR WHO PRESCRIBED THE MEDICATION WAS UNAVAILABLE. HE INDICATED TO HER HE DIDN'T WANT TO BE HEARD BY TELEPHONE. AND THAT SHE DID DISCUSS THE MATTER WITH HER SUPERIOR.

NOW, HER SUPERIOR RECALLS HAVING DISCUSSED THE MATTER WITH HER; AND, IN FACT, HAVING WATCHED MRS. ROGERS MAKE SOME TECHNICAL ... ADDITIONS AND SUBTRACTIONS AS TO WHAT THE CHANGE WOULD BE.

WHAT SHE TESTIFIED HAPPENED WAS THAT, QUITE FREQUENTLY, IN THE TRANSCRIPTION FROM WRITTEN ORDERS OF A DOCTOR TO WHAT GETS TYPED UP ON THE SHEET, AND THAT THERE ARE TYPOGRAPHICAL ERRORS AND MISSTATEMENTS, AND SO FORTH. AND THAT PREVIOUSLY EVERYTHING WAS SUPPOSED TO BE -- EXCUSE ME, THAT PREVIOUSLY THERE HAD BEEN AN ORDER FROM THE PHARMACY THAT THINGS BE ADMINISTERED IN MILLI-EQUIVALENTS. AND SHE HAD ASSUMED THAT -- THAT THAT WAS THE STANDING ORDER; THAT THINGS OUGHT TO BE IN MILLI-EQUIVALENTS.

WHEN SHE SAW THAT IT WAS IN MILLILETERS, SHE, IN HER PROFESSIONAL JUDGMENT, ALSO BASED ON WHAT SHE FELT WAS THE CONDITION OF THE PATIENT -- AND WE DON'T ARGUE THAT IT'S HER RIGHT AS A NORMAL MATTER TO DO THAT -- BUT BASED ON HER PROFESSIONAL JUDGMENT OF THE CIRCUMSTANCES; THAT IS, THE CONDITION OF THE PATIENT, THE FACT THAT THERE HAD BEEN A NOTICE FROM THE PHARMACY THAT YOU'RE SUPPOSED TO PRESCRIBE IN MILLI-EQUIVALENTS; AND ... HAVING MADE SOME COMPUTATIONS ON IT SHE CAME TO THE CONCLUSION THAT IT MUST HAVE BEEN A MISTAKE IN TRANSCRIPTION -- NOT BY THE DOCTOR; SHE WAS NOT OVERRULING THE DOCTOR -- BUT RATHER THAT -- SOME TYPIST, OR CLERICAL PERSON, HAD MADE A MISTAKE.

THE COURT: BUT YOU DON'T -- WOULDN'T YOU CONSULT WITH THE PHYSICIAN'S STAFF AND SAY: LOOK AT THIS A SECOND; IT CAN'T BE RIGHT .. FOR THIS PATIENT; AND LET'S -- I MEAN, BECAUSE --

MR. REMCHO: THAT'S RIGHT.

THE COURT: -- THIS IS A -- THIS IS DOWN AT THE V.A. HOSPITAL, ISN'T IT?

YOU HAVE TO PRESENT -- SHOW ME IS THAT THE EVIDENCE IN THE RECORD DOESN'T SUPPORT THE FINDING.

TO SAY: WELL, THE EVIDENCE DOESN'T DISPUTE NOT SUPPORTING THE FINDINGS, IS ANOTHER ONE OF THE TECHNICALITIES THAT I'M A LITTLE BIT LOST WITH.

BUT, I MEAN ... I DON'T ....

MR. REMCHO: THE EVIDENCE --

THE COURT: I DON'T KNOW.

MR. REMCHO: THE EVIDENCE -- OKAY. THERE'S NO EVIDENCE WHICH SHOWS THAT SHE WAS NOT EXERCISING GOOD PROFESSIONAL JUDGMENT.

I MEAN, YOUR HONOR, THE --

THE COURT: THEY DIDN'T THINK SO.

MR. REMCHO: YOUR HONOR, THE BASIS OF THE CHARGE IS THE V.A. REGULATION. THEY'VE GOT TO FOLLOW THEIR OWN REGULATION.

AND THEY SAY THAT NO DISCIPLINE WILL BE IMPOSED IF A PERSON IS ACTING OUT OF THEIR OWN PROFESSIONAL JUDGMENT. ??

THE COURT: WELL, IT --

MR. REMCHO: QUESTIONS OF PROFESSIONAL JUDGMENT WILL NOT REQUIRE DISCIPLINE.

THE COURT: IT DOESN'T MEAN THAT LITERALLY, OBVIOUSLY. BECAUSE THEN -- YOU MIGHT THEN HAVE SOME WARD HELP ?? WHO'S GOT A PROFESSIONAL JUDGMENT THAT: MAYBE I OUGHT TO GET, YOU KNOW, 30 CC'S OF SOME NONSENSE.

IT CAN'T MEAN THAT, CAN IT?

MR. REMCHO: I -- IT DOESN'T MEAN THAT.

BUT WHAT IT DOES MEAN IS THAT THE BURDEN -- IF YOU'RE GOING TO TERMINATE A PERSON, WHO'S BEEN WITH AN AGENCY FOR SEVEN YEARS, HAS PASSED A STRONG THREE-YEAR PROBATIONARY PERIOD -- IF YOU'RE GOING TO TERMINATE HER, THEN YOU OUGHT TO HAVE SOMETHING IN THE RECORD WHICH INDICATES THAT UNDER THESE CIRCUMSTANCES IT'S NOT PROFESSIONAL JUDGMENT.

HERE, AND IT SHOULD BE CHANGED.

MR. REMCHO: SHE DID THAT.

THE COURT: IT SEEMS TO ME THE EXERCISE OF GOOD JUDGMENT WOULD BE IN CALLING ATTENTION TO THE PERSONS WHO DO -- WHO ARE INVESTED WITH THE RESPONSIBILITY FOR THE MEDICATION, BRINGING IT TO THEIR ATTENTION, AND SAYING: LOOK, MAN, YOU OUGHT TO REVIEW THIS.

NOW, THEY MIGHT RESENT HAVING A NURSE SAY: YOU SHOULD REVIEW IT.

BUT SUPPOSE IT WAS AN IMPROPER THING -- THERE MIGHT BE SOME HARRUMPHING AND HURRAHING; BUT WITH WHATEVER COVERING UP OF FACE THERE MIGHT BE, I'M SURE THEY WOULD WANT TO CHANGE IT.

NOW, THAT'S WHAT I WOULD THINK WOULD BE THE EXERCISE OF JUDGMENT. BUT --

MR. REMCHO: SHE DID DO THAT, YOUR HONOR. SHE SENT TO THE NURSING SUPERVISOR ABOUT IT.

NOW, WE HAVE --

THE COURT: IS THAT LADY STANDING UP BACK THERE FOR SOME REASON (INDICATING LADY IN THE AUDIENCE OF THE COURTROOM)?

I DON'T KNOW WHO SHE IS.

MR. ....

MR. REMCHO: I'M SORRY. THAT'S MRS. ROGERS; SHE SHOULD NOT BE STANDING UP.

THE COURT: OH, THAT'S MRS. ROGERS. I DIDN'T KNOW HER.

SHE WAS STANDING BY THE DOOR, AND THEN -- ALL RIGHT. I GIVE HER PERMISSION TO WALK WHILE BEING IN COURT.

MR. REMCHO: BUT SHE DID GO TO -- THERE'S NO CONFLICT; THERE'S NO DISPUTE; OF HER TESTIMONY THAT SHE WENT TO THE SUPERVISOR.

THE NURSING SUPERVISOR, HERSELF, TESTIFIES THAT THERE WAS A DISCUSSION ABOUT THESE MILLI-EQUIVALENTS. SEE, IT SEEMS TO ME, YOUR HONOR, THAT --

THE COURT: BUT SHE SAID HERSELF, THAT NOBODY, NOBODY WHO WAS A SUPERIOR, AUTHORIZED THE CHANGE THAT SHE MADE.

MR. REMCHO: THAT'S CORRECT.

THE COURT: NOBODY.

MR. REMCHO: THAT'S CORRECT.

THE COURT: NOW, SHE SAYS SHE HAD SOME DISCUSSION WITH SOMEBODY.

BUT SHE MOST CERTAINLY DIDN'T GO TO THE WARD DOCTOR, OR TO THE PATIENT'S OWN ASSIGNED DOCTOR.

MR. REMCHO: WELL, AS I -- AS THE RECORD INDICATES, YOUR HONOR, THE WARD DOCTOR WAS NOT AVAILABLE AT THE TIME. HE HAD .... HE WAS JUST NOT THERE. HE WAS NOT IN THE HOSPITAL -- EXCUSE ME, THE DOCTOR WHO WAS HANDLING THE PATIENT WAS NOT IN THE HOSPITAL.

THE COURT: WELL, WHAT ABOUT THE WARD? WASN'T THE WARD --

MR. REMCHO: THE RECORD IS SILENT ON THAT, YOUR HONOR.

THE COURT: WELL ....

MR. REMCHO: BUT, YOU SEE, YOUR HONOR, IF --

THE COURT: THERE'S NO SHOWING THAT THE WARD PHYSICIAN WAS NOT AVAILABLE, WAS THERE?

MR. REMCHO: THERE'S NO SHOWING THAT --

THE COURT: THERE'S NO SHOWING THAT SHE HAD TO DO THE ?? AND THERE'S NO INDICATION THAT SHE COULDN'T HAVE -- I MEAN, WHEN YOU TALK ABOUT WHAT WAS GOOD JUDGMENT, I DON'T KNOW THAT I'M QUALIFIED TO SAY WHAT'S GOOD JUDGMENT. I HAVE NO KNOWLEDGE OF THIS.

WHAT SEEMS TO ME TO BE ... IMPERMISSIBLE CONDUCT THAT ... IF -- IF THERE'S ANY MERIT IN THE -- IN THE FOCUS OF RESPONSIBILITY UPON THE .... UPON THE .... UPON THE DOCTOR WHO PRESCRIBES IT, AND IF

CALLED FOR LIKE PENALTIES FOR LIKE OFFENSES.

AND IT SEEMS TO ME THAT THIS COURT CAN SAY: LOOK, YOU KNOW, WE -- WE WILL UPHOLD ADMINISTRATIVE AGENCIES WHEN THERE'S SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT IT, AND THEY ARE FOLLOWING THE LAW.

THE COURT: WELL -- ALL RIGHT.

MR. REMCHO: BUT THERE'S A REAL QUESTION AS TO WHETHER THAT'S HAPPENED, YOUR HONOR.

AND THE FACTS OF THIS CASE, WHEN YOU LOOK AT IT, YOU'VE GOT A PERSON WHO MADE AN ADMITTED CHANGE, THERE WERE CLEAR MITIGATING FACTORS THERE. SHE FELT IT WAS IN HER PROFESSIONAL JUDGMENT; SHE CHECKED WITH SOME PEOPLE -- THOUGH NOT EVERYONE -- WHERE SHE'S HAD SEVEN YEARS' EXPERIENCE, WHERE SHE'S HAD A ROUGH -- THE LONGEST PROBATIONARY PERIOD THAT I KNOW OF ANY GOVERNMENT AGENCY, OF THREE YEARS; WHEN YOU TAKE ALL OF THAT, AND THE RECORD, AND THE FACT THAT THE AGENCY NOWHERE, ANYWHERE, IN THE ADMINISTRATIVE RECORD, FINDINGS, OR ANYTHING, INDICATED THEY WERE FOLLOWING --

THE COURT: WELL, I GUESS THAT --

MR. REMCHO: -- ITS OWN REGULATIONS.

THE COURT: I GUESS THEY ALSO HAD IN MIND THAT OTHER CHARGE. THERE WAS SOME INDICATION THAT ... THIS LADY DEVOTED A GOOD BIT OF ENERGY TO INTERROGATING OTHERS, AND OTHER NURSING ASSISTANTS; AND I ASSUME THAT THEY FIGURED THAT SHE REALLY FELT THAT ... BOTH THE DOCTORS, AND THE NURSING ASSISTANTS .... WELL, I DON'T KNOW WHAT SHE FELT.

MR. REMCHO: YOUR HONOR, YOU'VE GOT A PERIOD THERE OF A FEW DAYS, OUT OF SEVEN YEARS, WHERE TWO NURSING ASSISTANTS OUT OF SIXTEEN TESTIFIED THAT THEY WERE UNHAPPY.

THE COURT: AGAIN, YOU ARE ASKING ME TO DO WHAT THE BOARD WAS -- THAT'S THEIR -- ITS FUNCTION.

I DON'T DISPUTE THAT -- LOOK, IF I HAD

A -- IF THIS WERE ON A TRIAL, AND IT WERE BEFORE ME, I WOULD LOOK AT IT AND TRY TO WEIGH IT, AND SEE WHAT THE CONDUCT WAS, ITS GRAVITY, IN RELATION TO THE YEARS OF GOOD SERVICE; WHETHER OR NOT IT APPEARED THAT LITTLE THINGS HAD MOUNTED UP UNTIL SOMEBODY DECIDED: WELL, WE'LL ACCUMULATE THESE, NOW, AND MAKE THIS.

BUT I DON'T HAVE THE AUTHORITY TO DO THAT IN REVIEWING THIS. I HAVE A NARROW, NARROW REVIEWING AUTHORITY.

AND THE POINT IS THAT WHAT -- WHATEVER I MIGHT THINK ABOUT IT, AND HOWEVER SENSIBLE IT MIGHT BE -- AND I ASSUME THAT IF SOME DOCTOR PRESCRIBED SHOE POLISH FOR ME, AND THE NURSE KNEW WHAT IT WAS, SHE WOULD SAY: WELL, HE MAY HAVE NOT GOTTEN IN EARLY ENOUGH LAST NIGHT, OR SOMETHING. YOU KNOW.

AND WHETHER THAT IS -- I ASSUME THAT GOES ON ALL THE TIME IN HOSPITALS; THAT -- I ASSUME THAT THERE IS NOT FAITHFUL AND LITERAL EXECUTION BY THE NURSING STAFF OF EVERY COMMAND THAT A DOCTOR MAY DO WITH A SHAKY PEN.

BUT, I MEAN, YOU KNOW, GIVEN -- GIVEN THAT AS JUST A MATTER OF HUMAN NATURE, I -- I DON'T -- WHEN YOU'RE BROUGHT TO BOOK ON IT, I DON'T KNOW HOW YOU JUSTIFY IT.

MR. REMCHO: YOU HONOR, WHEN .... AND I THINK THE COURT IS OBVIOUSLY QUITE CORRECT; THAT THIS IS NOT A TRIAL DE NOVO. BUT THERE COMES A POINT, WHEN AN ADMINISTRATIVE AGENCY IS, IN FACT, IN VIOLATION OF ITS OWN REGULATIONS, OR OTHERWISE SO ARBITRARY AND CAPRICIOUS, THAT IT REALLY SHOULD BE SET ASIDE.

THE COURT: WELL, I --

MR. REMCHO: AND IT SEEMS TO ME --

THE COURT: I REALLY DON'T SEE THAT ITS ARBITRARY OR CAPRICIOUS, UNDER THE CIRCUMSTANCES.

I THINK THE RECORD REFLECTS THAT

THERE'S SUBSTANTIAL SUPPORT FOR THE DECISION, AT LEAST ON THE SUBSTITUTION OF A MEDICINE.

AND WHILE I DON'T HAVE AS MUCH CONFIDENCE THAT THE RECORD IS THAT STRONG ON THE ONE ABOUT THE INVESTIGATIVE CAPACITY SHE ASSUMED, I WOULD ASSUME THAT MAYBE THAT -- LOOKING AT IT IN THE CONTEXT OF DECORUM AND DISCIPLINE OF A HOSPITAL, THAT MAY -- IN THE LIGHT OF THE PEOPLE WHO HAVE TO LIVE THROUGH THAT -- IT MAY HAVE SOME IMPORTANCE THAT WOULDN'T NECESSARILY OCCUR TO ME.

I THINK THAT SECOND ONE ABOUT: DID HE GET THE CUP OF COFFEE OR NOT; I -- THAT'S KIND OF NONSENSE --

MR. REMCHO: I AGREE WITH THAT, YOUR HONOR.

THE COURT: -- IT SEEMS TO ME. THAT ONE FALLS -- PRETTY MUCH FALLS ON ITS FACT, I THINK.

BUT THE OTHER TWO ... I THINK THAT'S SUBSTANTIAL EVIDENCE.

MR. REMCHO: YOUR HONOR, ON THE ... QUESTION OF ... ARBITRARY AND CAPRICIOUS -- AND THIS DOESN'T GO JUST TO -- YOU KNOW, SOMEONE LOOKS AT THIS AND SAYS: IT'S TOTALLY ARBITRARY. THE -- SUBSUMED WITHIN THAT IS WHETHER THE AGENCY IS REALLY FOLLOWING ITS OWN REGULATIONS.

AND IF -- IF AN AGENCY PROMULGATES REGULATIONS, WHICH PRESUMABLY THE PEOPLE WORKING THERE ARE SUPPOSED TO FOLLOW IN A WHOLE HOST OF LEVELS; AND THEN WHEN IT COMES TO TERMINATING THEM, JUST DOESN'T FOLLOW THE REGULATIONS, IT SEEMS TO ME --

THE COURT: THERE WASN'T ANY DOUBT IN HER MIND ABOUT WHAT THE -- WHAT THE -- WHAT THE RULES ARE ABOUT WHO DID WHAT DOWN THERE, THOUGH, WAS THERE?

MR. REMCHO: WITH .... WITH RESPECT TO WHAT, YOUR HONOR?

THE COURT: WITH RESPECT TO PERSON

THREE. ONE AND THREE. WITH RESPECT TO WHO MADE THE -- WHO ADMINISTERS THE ... TREATMENTS IN THE HOSPITAL.

MR. REMCHO: WHO WRITES MEDICATION.

THE COURT: THE MEDICATION.

NO QUESTION --

MR. REMCHO: I ASSUME THERE WAS NO QUESTION ABOUT THAT.

THE COURT: YOU ARE NOT TALKING ABOUT THAT.

MR. REMCHO: THERE WAS NO QUESTION ABOUT THAT, YOUR HONOR.

THE COURT: NO.

MR. REMCHO: BUT THERE IS SOME QUESTION -- SEE, WHAT I THINK HAS HAPPENED IS THIS: THIS ADMINISTRATIVE AGENCY AND THAT BOARD OUGHT TO DETERMINE THE -- THEIR OWN REGULATIONS SAY THAT THEY OUGHT TO DETERMINE WHETHER, UNDER ALL THE CIRCUMSTANCES -- WHETHER IN A PARTICULAR CASE, WHETHER ON EACH OF THESE FACTS -- THE NURSE WAS ACTING OUT OF GOOD PROFESSIONAL JUDGMENT.

IF SHE WASN'T, THEN THEY -- THEN THEY CAN IMPOSE DISCIPLINE. AND --

THE COURT: WELL, IF YOU WANT ME --

MR. REMCHO: -- AND THAT'S UP TO THEM TO --

THE COURT: IF YOU WANT ME TO ACT ON THIS, I WOULD SAY THAT IN THE ABSENCE OF AN EMERGENCY, IF I WERE ON THAT BOARD, I WOULD SAY THAT IT'S NOT -- IT IS OPPOSITE OF GOOD PROFESSIONAL JUDGMENT FOR A NURSE, WITHOUT AUTHORIZATION, NEED BY REASON OF EMERGENCY, TO CHANGE WHAT THE DOCTOR PRESCRIBED. I WOULD FIND THAT NOT -- IF THAT'S -- IF THAT'S THE TERM YOU WANT TO IMPLY.

MR. REMCHO: LET ME -- LET ME, IF I MAY, YOUR HONOR, TURN THE ARGUMENT BACK AND SAY THAT THAT'S WHAT YOU MAY DO UNDER THESE CIRCUMSTANCES; THAT -- THAT BOARD MAY VERY WELL HAVE DONE SOMETHING DIFFERENT IF THEY

HAD FOLLOWED THEIR OWN REGULATIONS.

AND WHAT I THINK THIS COURT IS EMPOWERED TO DO IS TO SAY TO THE BOARD: LOOK, FOLLOW YOUR OWN REGULATIONS. IF YOU SAY YOU CAN'T FIRE PEOPLE IF THEY ARE ACTING OUT OF GOOD PROFESSIONAL JUDGMENT --

THE COURT: WELL ....

MR. REMCHO: WELL, THEN, MAKE SOME FINDINGS AS TO THAT.

THE COURT: I THINK THE BOARD COULD VERY WELL HAVE CONCLUDED THIS IS NOT GOOD PROFESSIONAL JUDGMENT. I DON'T HAVE ANY DOUBT THAT THEY COULD HAVE COME TO THAT CONCLUSION.

WHETHER THEY SHOULD HAVE IS SOMETHING ELSE.

MR. REMCHO: BUT THE REAL QUESTION, I THINK, YOUR HONOR, IS WHETHER THEY APPLIED THAT STANDARD, OR WHETHER -- WHETHER THEY SHOULD HAVE BEEN REQUIRED TO APPLY THAT STANDARD.

THE COURT: THE RECORDS INDICATE TO ME THAT THAT MAY BE EXACTLY WHAT THE BOARD HAD IN MIND; THAT IT COULD HAVE APPLIED THAT.

SO I'M READY TO RULE ON THIS.

I DENY THE MOTION OF THE PLAINTIFF FOR SUMMARY JUDGMENT; AND I GRANT SUMMARY JUDGMENT FOR THE GOVERNMENT.

MR. REMCHO: YOUR HONOR, COULD WE HAVE ... FINDINGS OF FACT AS TO EACH OF THE CHARGES IN SUBSTANTIAL EVIDENCE?

THE COURT: WILL YOU SUBMIT ... FINDINGS --

MR. FITZPATRICK: I DON'T THINK FINDINGS OF FACT ARE REQUIRED UNDER RULE 56.

MR. REMCHO: ON THE EVIDENCE. I'M ASKING -- I'M ASKING FOR IT.

THE COURT: WELL, YOU DON'T --

MR. REMCHO: THEY ARE NOT REQUIRED.

MR. FITZPATRICK: IF IT WAS AFTER A TRIAL, YES; BUT UNDER RULE 56 --

THE COURT: UNDER RULE 56, I DON'T

NEED TO MAKE ANY FINDINGS.

I'M NOT GOING TO GO AND REVIEW WHAT THE EVIDENCE IS IN ITS -- IN ITS SPECIFICITY.

I'VE LOOKED AT IT AND SEEN WHETHER IT ADDS UP SUBSTANTIALLY.

WILL YOU PREPARE AN ORDER?

MR. FITZPATRICK: I WILL.

THE COURT: ALL RIGHT. THANK YOU.

MR. REMCHO: THANK YOU, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED AT 11:38 O'CLOCK A.M.)

---000---

LYNETTE ROGERS, pro se
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA [SIC]

LYNETTE ROGERS,
Plaintiff, pro se
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS; et al; RALPH M. HARTMAN, DIRECTOR OF WORKERS' COMPENSATION PROGRAM; GERALD T. CULLEN, DEPUTY COMM., et al.,
Defendants

Civ. No. C-94-16253
AFFIDAVIT

I, LYNETTE ROGERS, declare:

That I am the appellant in the above civil case, and that I have personal knowledge of the following:

1. That a conspiracy was entered by seven (7) nurses, and supported by my supervisors to cause my removal from the VA. These events are on a reported transcript at an agency Hearing.

2. Specifically, seven (7) subordinate nurses conspired on federal property in the parking lot of the VA Hospital, Palo Alto. They then agreed to meet in one or the other's apartments or houses, as well as Denny's restaurant for the purpose of constructing a list of my alleged deficiencies, and methods of improving them.

3. These seven (7) nurses then

scheduled a meeting with Chief Nurse Helen Hennessy, RN, and some of the seven met with her seeking her guidance.

4. This unrest fermented as I was completing my three year probationary period. Almost three (3) months later, I was demoted in rank by Chief Nurse Hennessy, RN, alleging seven non-specific reasons as failure in leadership.

5. I was removed and deprived of equal privileges in that I was deprived and removed from the classes in leadership given other Head Nurses at this time.

6. Two months later, in early May, I was informed by my Supervisor, Doris von Morpugo, that she was recommending that I be removed from public service in the VA.

I declare that the above is true and correct to the best of my knowledge, and do so under penalty of perjury by the laws of the State of California on this day of September ___, 1994.

_____

LYNETTE ROGERS, pro se

[Notarized by Long Fa Hwang on 9/9/94]

UNITED STATES GOVERNMENT

MEMORANDUM DATE: 1/10/73

TO: Mrs. Lynete Rogers RN - 2B-2

FROM: Clinical Coordinator Bld 2

SUBJECT: 90 day counseling prior to Proficiency

I have scheduled a meeting with you for 10:30a.m. Monday 1/15/73 for your 90 day counseling prior to your proficiency on 1/15/73. I have asked the four head nurses to join us in case there are any points for discussion you might wished clarified.

/s/ Junne Cramer

UNITED STATES GOVERNMENT
MEMORANDUM
DATE: June 29, 1973
TO: Lynette Rogers, R.N.
FROM: Clinical Coordinator, Bldg. 2
SUBJECT: Proficiency Counseling

You are scheduled for your second Proficiency Counseling monday July 2, 1973 at 8:30am in the office of Chief, Nursing service, Room B-124.

JUNNE CRAMER, R.N.

7/1/1973
To: Mrs. J. Cramer, RN, Clinical Coordinator
From: Mrs. L. Rogers, RN
Subject: Memorandum dated June 29, 1973

1. On Friday, June 29, 1973, around 3:00p.m., I was handed a Memorandum by Mrs. M. Kallstrom, RN, Head Nurse, Ward 2C1. This memorandum bears a type-written signature Mrs. J.Cramer, RN. The Memorandum states:"You are scheduled for your second Proficiency Counseling Monday, July 2, 1973,at 8:30 a.m. in the office of Chief Nursing service, Room B-124."

2. Respectfully, I am objecting to this meeting for the following reasons:
a) This meeting is in violation of the Proficiency Rating System, DM&S Supplement, MP-5, Part II, Chapter 6.
b) The possibility of a violation of my rights under the Constitution of the United States.

3. I am requesting that I be permitted the following consideration if this meeting is to proceed;
a) That I be permitted to record, by tape and in writing the context of this meeting: or:
b) That I be permitted to have a representative of my own choosing to be present during the entire meeting.

4. If I be denied both requests under Sect.3, paras a&b, and with knowledge of the reasons stated by me in Sect2, paras. a&b, I am respectfully informing you that I am left with no alternate but

to invoke the Fifth Amendment of the Constitution of the United States, so that my rights are protected during the entire meeting.

Respectfully submitted,

Mrs. Lynette Rogers, RN

cc Chief, Nursing Service
Mr. James Ware, Attorney at Law.

AFGE
Local 2110
Veterans Administration Hospital
VA Hospital
Box V-11
3801 Miranda Avenue
Palo Alto, California 94304
October 10, 1972

A. M. Gottlieb, M. D.
Hospital Director 640/00
VA Hospital Rm 1-B-105
3801 Miranda Avenue
Palo Alto, California 94304

Dear Doctor Gottlieb:

This is in reply to your letter dated September 29, 1972 which was received on Monday October 2, 1972 reference to your letter of July 11, 1972 in which you advised of the requirement of specificity as stated in paragraph 7B, Section B, Chapter 8, Part II, VA Manual MP-5 in connection with the grievance of Mrs, Lynette Rogers.

The undersigned advised you by letter dated September 11, 1972 that our letter requesting a hearing dated June 23, 1972, did in fact comply with the requirements of Chapter 8, VA Manual, MP-5, Part II, furthermore evidence supporting our allegations was attached to our request. (Letter dated July 11, 1972, to Honorable Congressman Charles S. Gubser)

Inasmuch as the letter of July 11, 1972 contained derogatory information reference to the "...long history of her problems here involving both employees who supervise her and employees she supervised." which was the basic initial

charge of releasing information to unauthorized persons relative to her employment record, we request that the actual record of the allegations be made available to the appellant.

We are concerned relative to the contents of Subchapter 7 of Ch Chapter 294, Federal Personnel Manual in which you allege that Management officials have considerable latitude in utilizing information of record in the Official Personnel Folder in pursuing Managements objectives.

First we fail to recognize chapter 494 of the FPM as you indicate and we fail to recognize Managements objectives in your letter to the Honorable Congressman Charles S. Gubser except that the unsupported statements will achieve the objective of impugning the integrity and character of the aggrieved.

Both Mrs. Rogers and I met with Mr. Carl Sickles and Mrs. Arlene Bence on Tuesday afternoon October, 3, 1972 and we advised them that we were not aware of any records pertaining to allegations made to the Honorable Congressman Charles S. Gubser. Although this specific complaint was discussed we have had no assurance that some corrective measures would be forthcoming.

We note for the record that the Grievance Procedure, VA Manual Mp-5, Part II, Chapter 8, paragraph 8, provides for requesting a hearing officer and at the same time exploring the possibility of seeking an informal adjustment of the grievance. We would be in favor of such an action.

In view of the fact that the burden of

proof is on management to support their allegations and the seriousness of the charges we believe that a hearing is in order and the necessity of examination of witness under oath is in order.

We urge that specific chapters, subchapters and paragraphs be clearly identified when reference to the Federal Personnel Manual is required or quoted. Your letter makes reference to Chapter 494 of the Federal Personnel Manual, Subchapter 7, as the basis for the authority of releasing information from the official personnel folder.

We hereby request full consideration in our request for the hearing in connection with this specific complaint.

Respectfully

Frank Waltjen, Consultant

cc; Congressman Gubser
Mr. Carl Sickles

VETERANS ADMINISTRATION HOSPITAL
3801 Miranda Avenue
Palo Alto, California 94304
October 26. 1973

TO: Mrs. Lynette Rogers, R.N.
V.A. Hospital
Nursing service
Palo Alto, California 94304

SUBJ: Reconsideration of Withheld Periodic Step Increase

1. By letter dated April 17, 1973, you were notified that your periodic step increase was being withheld because your performance did not meet the acceptable level of competence as set by Nursing Service. You were also notified that your performance would be reviewed over the next six months and you would be reconsidered for a periodic step increase on October 28, 1973.

2. One of the criteria a physician, dentist, or nurse must meet to be considered for a periodic step increase is to have on record a satisfactory current proficiency rating. Your current proficiency rating is unsatisfactory. Therefore, on reconsideration your periodic step increase is being withheld.

3. On October 28, 1974 you will be reconsidered for a periodic step increase.

4. You may request a reconsideration, either personally or in writing or both personally and in writing within 15 calendar days from receipt of this

notification. Outline the reasons for your request for the Hospital Director. submit it to the Chief, Nursing service through me. If you elect to have a reconsideration in person, you have the right to have a representative of your own choosing to help you in your personal presentation.

5. A copy of this notification will be placed in your Official Personnel Folder until such time as the periodic step increase is granted.

/s/Junne Cramer
JUNNE CRAMER
Clinical Coordinator

VETERANS ADMINISTRATION HOSPITAL
3801 Miranda Avenue
Palo Alto, California 94304
October 29, 1974

TO: Mrs. Lynette G. Rogers
624 Cornelia Court
Mountain View, Calif. 94040

SUBJ: Redetermination of withheld periodic step increase

1. A redetermination of your withheld periodic step increase was made on October 27, 1974. It was decided that your periodic step increase could not be granted at this time because one of the criteria a physician, dentist, or nurse must meet to be considered for a periodic step increase is to have on record a current satisfactory proficiency rating. You do not have a current satisfactory proficiency rating for nursing performance.

2. On October 27, 1975 you will be reconsidered for a periodic step increase.

3. You have the privilege of informally requesting a review of this decision by the Hospital Director. Should you exercise this privilege, the Hospital Director's decision will be final.

/s/Helen F. Hennessy
HELEN F. HENNESSY, R.N.
Chief, Nursing Service

Concur.
/s/ Franklin Johnson
FRANKLIN JOHNSON, M.D.
Chief of Staff

H-7

VETERANS ADMINISTRATION HOSPITAL
3801 Miranda Avenue
Palo Alto, California 94304
NOV 8 1974
In Reply Refer to: 640/135

Mr. David C. Weinberg
Weinberg & Ziff
Attorneys at Law
379 Lytton Avenue
Palo Alto, California 94301

Dear Mr. Weinberg:

Your letter to the Chief, Nursing Service, concerning the redetermination of Mrs. Lynette G. Rogers' periodic step increase has been referred to me for a review of the action as you requested.

Title 38 United States Code, Chapter 73, authorizes the Administrator of Veterans Affairs to prescribe regulations governing the employment of physicians, dentists, and nurses in the Veterans Administration's Department of Medicine and Surgery. Those regulations are contained in VA Personnel Policy Manual MP-5, Part II, and its Supplement. The specific regulations applicable to the present matter are contained in DM&S Supplement MP-5, Part II, Section 5.13. This Section, among other things, outlines the requirements a physician, dentist, or nurse must meet before being considered for a periodic step increase. One of those requirements is that a satisfactory proficiency rating is of record. Mrs. Rogers' proficiency rating of record is unsatisfactory. Therefore, she cannot be granted a periodic step increase.

Sincerely yours,
/s/Franklin Johnson M.D.
For and in the absence of
A. M. GOTTLIEB, M.D.
Hospital Director

H-8

JAMES L. BROWNING, JR.
United States Attorney

HOWARD T. CHANG
Assistant United States Attorney

450 Golden Gate Avenue
San Francisco, California 94102
Telephone: (415)556-0431

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
ADMINISTRATOR OF VETERANS ADMINISTRATION HOSPITAL, et al,
Defendants.

CIVIL NO. C-73-0739-CSR
AFFIDAVIT OF ESTHER McSHAN

State of California)
)ss.
County of Santa Clara)

I, ESTHER McSHAN, being first duly sworn, do hereby depose and say that:

1. I am presently Head Nurse, Ward 2B-2, Building No. 2, Veterans Administration Hospital, Palo Alto, California.

2. In such position, my duties and responsibilities consist of making work assignments, issuing instructions for the proper completion of such assignments, initiating new patient programs, participating in the training of employees and evaluating the performance of all nursing employees assigned to ward 2B-2 and under my supervision. Currently, there are approximately 25 such employees under my

supervision.

3. With the exception of brief, temporary assignments to other wards, the plaintiff has been assigned to Ward 2B-2 under my supervision and control during the period October 15, 1972 through August 4, 1973.

4. In connection with my official duties and responsibilities, I participated in two counseling sessions with the plaintiff. The first counseling was held on December 14, 1972, and the second on January 19, 1973. The latter was conducted as the plaintiff's 90-day counseling prior to the annual Proficiency Report due in April 1973. During both counseling, numerous deficiencies in plaintiff's performance were mentioned to her and specific recommendations were made. The plaintiff was also advised that based on her unsatisfactory performance in the preceding nine months, an adverse or unsatisfactory Proficiency Report would be issued unless progress was noted.

5. On or before March 7, 1973, I consulted with Junne E. Cramer, Clinical Coordinator, Intermediate Care Services, and advised her that the plaintiff's performance was unsatisfactory in many areas.

6. On August 2, 1973, I prepared a Proficiency report on the plaintiff's performance during the preceding year. In that report, I rated her with a score of 31, which is an unsatisfactory rating. This rating was based on my personal knowledge and observation of the plaintiff's performance while she was assigned to Ward 2B-2.

7. The Proficiency Report, dated August 2, 1973, which is attached as Exhibit F to the Affidavit of Junne E. Cramer, was prepared by me without any reference or

connection to the filing of this lawsuit. In no way was the unsatisfactory report issued as a retaliatory measure.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability, and if called to testify, I could testify competently thereto.

/s/ Esther Mcshan
ESTHER McSHAN.

SUBSCRIBED and SWORN to before me this 27th day of August, 1973.
/s/ Mildred Goltz
SEAL: MILDRED GOLTZ
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case no. C-83-0719 JPV, and I have personal knowledge of the following facts that,
2. I received an Unsatisfactory Proficiency Report on August 3, 1973, from Head Nurse, Esther McShan, RN. I noted on this report that "I do not agree with this proficiency since the material is circumstantial." [Attach: "a"].
3. Esther McShan, RN, had full knowledge, that this report was fraudulent, but took no action to prevent the illegal consequences from her action.
4. Because of this Proficiency Report, Chief Nurse, H. Hennessy, RN, first removed me from the clinical area and detailed me to do clerical duties; and second, placed me in confinement in a small room by segregating me from my peers, and depriving me of sensory stimulation for almost 106 days.
5. Because of this Proficiency Report, charges were brought against me by the VA and I was separated from the Service two years later, on November 8, 1975.
6. Because of this Proficiency Report, Esther McShan, RN, signed an affidavit under the auspices of the United States Attorney, James L. Browning, Jr., on August 27, 1973, alleging that she "...prepared a Proficiency Report...based on [her] personal knowledge and observation of the plaintiff's

performance...[Since]...(with the exception of brief, temporary assignments to other wards, the plaintiff has been assigned... under my supervision and control ..." [Attach. "b"].

7. Because of this Proficiency Report, the charges that ensued from it have been upheld by eleven Judges sitting in seven Federal Courts in the United States.

8. On April 15, 1989, at 6:15 pm, I spoke with Mrs. McShan, RN, of Woodlake, California.

9. Mrs. McShan, RN, admitted that neither the Proficiency Rating score of 31, nor the professional judgment entered as a narrative report on this document were made by her.

10. Mrs. McShan, RN, agreed to give me a statement on this matter, so I engaged the services of Mr. Edward Piggins, Jr. of Harder and Associates, Los Altos, to obtain this statement personally. Mrs. McShan changed her mind. [Attach. "c"].

11. On a separate sheet dated April 17, 1989, Mrs. McShan, RN, states that she "consulted...[her] attorney...and he has advised me to have no involvement in this matter." [Attach. "d"].

12. Around the second or third week in August, 1973, I saw a typist, Jenny Booth, in VAPA nursing office typing a recommendation for a high-quality increase for Esther McShan, RN.

13. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July

11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, Plaintiff pro se

AFFIDAVIT OF EDWARD S. PIGGINS OF HARDER & ASSOCIATES

I, Edward S. Piggins, as representative of Harder & Associates, do hereby declare the following: I have personal knowledge of the information provided in this affidavit. On April 18, 1989 I personally travelled to Woodlake, California. The purpose of my visit was to meet with Esther McShan at the request of Lynette Rogers of Mountain View, California. I was informed by Ms. Rogers that Esther McShan had agreed to give a signed statement concerning the Proficiency Report given Ms. Rogers in 1973 at the V.A. Hospital of Palo Alto, California. Upon arriving at Ms. McShan's residence in Woodlake, California, I was informed by Ms. McShan's daughter that she was housesitting in Visalia. Upon arriving in Visalia at the designated house, I met with Ms. McShan whereupon she informed me that she had changed her mind about giving a signed statement because she wanted to consult with her personal attorney concerning her involvement. On April 20, 1989 I received a personal handwritten statement, a true copy attached herein, from Ms. McShan wherein her attorney advised her not to be involved.

I swear under penalty of perjury that the above statement is true.

/s/ Edward S. Piggins, Jr.
EDWARD S. PIGGINS, JR. 10/12/89

HARDER & ASSOCIATES
(415) 941-5441

[Notarized by Ruth Tubbs on 10/13/89]

April 17, 1989

Dear Lynette,

I have consulted my attorney and he has advised me to have no involvement in this matter.

Sincerely

Esther McShan

H-10(d)

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Workers' Compensation
Programs

Stamped: APR 6 1977
File No. A13-422643
Inj: 5-10-74
Re: Lynette G. Rogers

Mrs. Lynette G. Rogers
624 Cornelia Court
Mountain View, California 94040

Dear Mrs. Rogers:

This has reference to your compensation case and your letter of March 2, 1977 regarding the status of your case.

Your file has been reviewed by our Medical Department. They are now in the process of referring you for further medical examination by a specialist. You will hear from them in a short while on the referral to a specialist.

Sincerely,
/s/ Robert P. Duggan
ROBERT P. DUGGAN
Hearings and Review Examiner

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Workers' Compensation
Programs

File No. A13-422643

May 23, 1977

Mrs. Lynette G. Rogers
624 Cornelia Court
Mountain view, California 94040

Dear Mrs. Rogers:

Arrangements have been made for psychiatric evaluation by Robert C. Burr, Jr., M.D., 787 W. Fremont Avenue, Sunnyvale, California 94087.

Please call his office, telephone number 732-8220, to make an appointment.

Standard Forms 1012 and 1012-A, Travel Voucher, are enclosed for your use in claiming reimbursement of necessary travel expenses incurred in going for the evaluation. They should be completed in accordance with the instructions enclosed.

Sincerely,
/s/Richard I. Myers, M.D.
RICHARD I. MYERS, M.D.
Medical Director

Enclosures

REPORT OF MEDICAL EXAMINATION

1. Name: ROGERS, LYNETTE G.
2. Grade and component or position: R.N.
3. Identification No.: 549 62 6833
4. Home Address: 624 Cornelia Court
   Mountain View, Ca. 94040
5. Purpose of Examination: Pre-emp.
6. Date of Examination: 4-11-68
7. Sex: F
8. Race: (no notation)
9. Total years government service:
   Military: (no notation)
   Civilian: (no notation)
10. Agency: N/A
11. Organization Unit: N/A
12. Date of Birth: 5-19-22
13. Place of Birth: Calcutta, India
14. Name, Relationship, and Address of Next of Kin: Mr. Francis Rogers (Husand) Precision Instruments, Palo Alto, CA
15. Examining Facility or Examiner, and Address: (not noted)
16. Other Information: (not noted)
17. Rating or Specialty: (not noted)
    Time in this Capacity: (not noted)
    Last Six Months: (not noted)

CLINICAL EVALUATION (Check each item in appropriate column (Normal or Abnormal); enter "NE" if not evaluated.)) NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

18. Head, Face, Neck and Scalp: Normal
19. Nose: Normal
20. Sinuses: Normal
21. Mouth and Throat: Normal
22. Ears - General (Int. & Ext. canals)(Auditory acuity under items 70 and 71): Normal
23. Drums (Perforation): Normal
24. Eyes-General (Visual acuity and refraction under itmes 59, 60 and 67): Normal
25. Ophthalmoscopic: Normal
26. Pupils (Equality and reaction): Normal
27. Ocular Motility (Associated parallel movements, nystagmus): Normal
28. Lungs and Chest (Include breasts): Normal

29. Heart (Thrust, size, rhythm, sounds): Normal
30. Vascular System (Varicosities, etc.): Normal
31. Abdomen and viscera (Include hernia): Normal. Noted: appendectomy, cholecystectomy.
32. Anus and Rectum (Hemorrhoids, fistulae)(Prostate if indicated): Normal
33. Endocrine System: Normal
34. G-U System: Normal
35. Upper Extremities (Strength, range of motion): Normal
36. Feet: Normal
37. Lower Extremities (Except feet)(Strength, range of motion): Normal
38. Spine, Other Musculoskeletal: Normal
39. Identifying body marks, scars, tattoos: Normal. None noted.
40. Skin, Lymphatics: Normal
41. Neurologic (Equilibrium tests under item 72): Normal
42. Psychiatric (Specify any personality deviation): Normal
43. Pelvic: Note: Total abd. Hyst.
44. Dental Number Chart on Missing/ Restorable Teeth. No further remarks of any additional Dental defects or diseases.

LABORATORY FINDINGS

No notations in category numbers 45 through 50.

*This report is available for examination.

REPORT OF MEDICAL EXAMINATION

1. Name: LYNETTE G. ROGERS VAHPA 640
2. Grade and component or position: No notation.
3. Identification No.: No notation.
4. Home Address: 624 Cornelia Court Mountain View, Ca. 94040
5. Purpose of Examination: Annual phys.
6. Date of Examination: 7/6/71
7. Sex: F
8. Race: (no notation)
9. Total years government service: Military: (no notation) Civilian: (no notation)
10. Agency: N/A
11. Organization Unit: N/A
12. Date of Birth: 5-19-22
13. Place of Birth: Calcutta, India
14. Name, Relationship, and Address of Next of Kin: Mr. Francis Rogers (Husand) Precision Instruments, Palo Alto, CA
15. Examining Facility or Examiner, and Address: (not noted)
16. Other Information: (not noted)
17. Rating or Specialty: (not noted) Time in this Capacity: (not noted) Last Six Months: (not noted)

CLINICAL EVALUATION and NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

18. Head, Face, Neck and Scalp: Normal
19. Nose: Normal
20. Sinuses: Normal
21. Mouth and Throat: Normal
22. Ears - General (Int. & Ext. canals)(Auditory acuity under items 70 and 71): Normal
23. Drums (Perforation): Normal
24. Eyes-General (Visual acuity and refraction under itmes 59, 60 and 67): Normal
25. Ophthalmoscopic: Normal
26. Pupils (Equality and reaction): Normal
27. Ocular Motility (Associated parallel movements, nystagmus): Normal
28. Lungs and Chest (Include breasts): Normal
29. Heart (Thrust, size, rhythm, sounds):

Normal

30. Vascular System (Varicosities, etc.): Normal
31. Abdomen and viscera (Include hernia): Normal.
32. Anus and Rectum (Hemorrhoids, fistulae)(Prostate if indicated): Normal
33. Endocrine System: Normal
34. G-U System: Normal
35. Upper Extremities (Strength, range of motion): Normal
36. Feet: Normal
37. Lower Extremities (Except feet)(Strength, range of motion): Normal
38. Spine, Other Musculoskeletal: Normal
39. Identifying body marks, scars, tattoos: Abnormal. Upper & low midline & LRQ abd. healed scars.
40. Skin, Lymphatics: Normal
41. Neurologic (Equilibrium tests under item 72): Normal
42. Psychiatric (Specify any personality deviation): Normal
43. Pelvic: NE: Note: Total Hysterectomy.
44. Dental Number Chart on Missing/ Restorable Teeth. No further remarks of any additional Dental defects or diseases.

LABORATORY FINDINGS

No notations in category numbers 45 through 50.

*This report is available for examination.

Harder & Associates
Edward S. Piggins, President
160 Main Street, Suite #6
Los Altos, California 94022
Telephone (415)941-5441
A Professional Private Investigative
Organization
Cal. State Lic. Pl-11428

AFFIDAVIT OF EDWARD S. PIGGINS

DR. ROBERT C. BURR has been conducting compensation and pension examinations on a fee basis and consultant basis, on the average of once a month, at the Veterans Administration Hospital since 1971 in Palo Alto.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on the 21st day of October, 1991, at Los Altos, California.

/s/ Edward S. Piggins, Jr
Edward S. Piggins, Jr.

TO: Mr. Wax
FROM: W. James Ware
Attorney for Plaintiff
RE: Grievance Hearing

INTRODUCTION

On May 3, 1973, a complaint was filed in the United States District Court, Northern District of California on behalf of Mrs. Lynette Rogers and against the Veterans Administration certain named individulas associated with the Veterans Administration. The complaint alleged that the Civil rights of Mrs. Rogers had been violated by the action of the defendants.

Several stipulations were made extending the time to answer.

On August 9, 1973, an answer having yet to be filed, Mrs. Rogers moved the court for a preliminary injunction, enjoining the defendants from taking certian actions which grew out of the acts originally sued upon. Specifically, Mrs. Rogers asked that the defendants be enjoined from refusing to grant her periodic step increase and from referring the matter to a Disciplinary Board or a Professional Standards Board.

On August 27, 1973, a response to the motion was filed, consolidated with a motion to dismiss and for Summary Judgment.

On Tuesday, September 4, 1973, the motion came on for hearing before the Honorable Charles B. Renfrew. At that hearing, Mr. Howard T. Chang, counsel for defendants, presented to the court a letter from Mr. Raymond P. Neal, Chief Attorney, Veterans Administration essentially offering Mrs. Rogers "a formal Hearing concerning her reassignment from head nurse to staff nurse on March 19, 1972." Opposition to such a hearing was expressed by counsel for Mrs.

Rogers on the grounds that the hearing was too limited and that the hearing may develop into a Disciplinary Board Hearing interested only in the question of terminating Mrs. Rogers. However, Mr. Chang assured the court that the hearing would consider all of Mrs. Rogers' grievances and would be a grievance hearing instead of a Disciplinary Board. With those assurances, counsel for Mrs. Rogers agreed to the hearing. The court, therefore, continued the motions for 6 months in order to allow the Veterans Administration to resolve the claims through its formal grievance process.

This memorandum presents the view of Mrs. Rogers on the scope and procedure of the grievance hearing.

Scope of Hearing

The effect of the order of the court to resolve the claims through a grievance hearing is to place before the Veterans Administration those claims before the court. Therefore, the scope of the hearing should include resolution of those matters contained in the ten counts of the complaint.

Moreover, because the court, relying on the offer of a hearing, did not rule on plaintiff's motion for a preliminary injunction, the matters contained in that motion must be heard by the Veterans Administration.

In no event shall the hearing consider disciplinary action against Mrs. Rogers.

Composition of the Panel

The panel must consist of individuals who have no connection with the events or people complained of. While Mrs. Rogers would like for her claim to be heard by professional nurses, they must be selected

in a manner which assures their impartiality.

Counsel for Mrs. Rogers should have the power to challenge any panel member for cause.

Discovery

Relevant portions of the personnel file of Mrs. Rogers must be made prior to the first hearing. While recognizing that there are parts of the personnel records which are irrelevant, counsel should be allowed to view any material made available to the hearing officers.

Witnesses

Counsel should be allowed to call as witnesses those individuals named in the complaint and any other person with direct knowledge of the events complained of.

All testimony must be given under oath.

Burden of Proof

Mrs. rogers shall bear the burden of proving by a prepnderance of evidence that she has a legitimate grievance upon which relief should be granted.

Transcript

A stenographer should be present, responsible for preparing an official transcript of the hearing.

Prayer for Relief

If the grievances complained of are substantiated the following relief shall be granted:

1. Removal from Mrs. Rogers' personnel file any and all material wrongfully recorded therein as a result of the acts complained of.

2. Reinstatement of withheld periodic step increases in wages.

3. Removal of unsatisfactory proficiency rating.

SPAETH, BLASE, VALENTINE & KLEIN
A Professional Corporation
400 Channing Avenue
P. O. Box 1320
Palo Alto, California 94302
(415) 327-6700
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
vs.
ADMINISTRATOR OF VETERANS ADMINISTRATION HOSPITAL, et al.,
Defendants.

NO. C 73-0739 CBR
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CERTIFICATE OF COUNSEL RESPECTING STATUS OF ADMINISTRATIVE HEARING

On September 4, 1973, a hearing was held before this Court, the HONORABLE CHARLES B. RENFREW, Judge presiding. The hearing was pursuant to Plaintiff's motion for a preliminary injunction and Defendant's motion to dismiss or for summary judgment. At the hearing, counsel for Defendant produced a letter from Raymond P. Neal, Chief Attorney, Veterans Administration Regional Office which offered to Plaintiff a formal hearing concerning her reassignment from head nurse to staff nurse. Exhibit "A".

Plaintiff's counsel expressed dissatisfaction with the limited scope of the offered hearing, and the Court stated:

"THE COURT: Why don't we do this, Mr. Ware? Why don't we see whether we can have this hearing -- the

scope of it, expanded to cover those items which you mentioned? It would seem to me all the grievances should be heard at a single hearing, including questions of the step increase, and questions of the matters in the personnel file, and to me that would make eminent good sense to have this matter conducted before whatever the appropriate administrative body is, rather than a court." [Reporter's Transcript of Hearing, p. 26, l. 1-9.]

Plaintiff's counsel agreed, and hearing on the pending motions was continued until the administrative hearing was conducted.

The hearing convened on April 10, 1974, MAXWELL RADIN, Hearing Officer presiding, and was abruptly terminated on April 16, 1974. The termination of the hearing was due to a failure of the Hearing Officer to conduct the hearing in accordance with the rules and regulations governing administrative hearing before the VETERANS ADMINISTRATION.

I

PLAINTIFF ASSERTS THAT THE ADMINISTRATIVE HEARING WAR PROCEDURALLY INFORM IN ELEVEN INSTANCES.

Plaintiff cites eleven aspects of the administrative hearing which violated her right to a full and fair hearing in accordance with Veterans Administration Regulations. These procedural errors were read into the record [See Reporter's transcript of Administrative Hearing pp. 632-639] and are set out in Exhibit "B" attached. In brief, they are as follows:

1. Failure to furnish an evidence file;
2. Admission of documents into evidence

which were not presented to Plaintiff for review;

3. Use of memoranda placed in Plaintiff's personnel file which were not presented to Plaintiff for review;
4. Failure to accept the opening statement of Plaintiff's representative;
5. Failure to allow Plaintiff to give testimony on programs instituted by her as head nurse;
6. Failure to rule on objections made by the representative of the Veterans Administrative and instead allowing the representative of the Veterans Administration to decide questions of relevancy;
7. Presence of a previous ajudication officer as an advisor to management;
8. Counseling of Plaintiff's witnesses by the attorney for management;
9. Failure to provide Plaintiff with a timely list of witnesses to be called by the Veterans Administration;
10. Failure to provide Plaintiff with a detailed statement of inefficiencies; and
11. Acceptance of a memorandum prepared in violation of Veterans Administration regulations.

II

THE MAJOR REASON FOR ABRUPT TERMINATION OF THE HEARING WAS THE FAILURE OF THE HEARING OFFICER TO PLACE THE BURDEN OF PROOF ON THE VETERANS ADMINISTRATION TO SUPPORT ADVERSE ACTIONS TAKEN AGAINST PLAINTIFF.

While pursuing a grievance based on a memorandum which labeled Plaintiff as incompetent as a head nurse, an adverse action was taken against her, in that she

was demoted from head nurse to staff nurse and reassigned to another building. On March 15, 1972 and for some time previous, Plaintiff notified the Chief of Staff that the adverse action was taken in violation of Veterans Administration policies and procedures:

> We believe that the demotion from the Head Nurse to the Staff Nurse position is an adverse action and appropriate advance notice was not given and further we believe sincerely that the reassignment of Mrs. Rogers is a punitive measure." [See Exhibit "C" attached p.1]

Receiving unsatisfactory response to her request for a hearing on the adverse action, on April 3, 1972, MRS. ROGERS wrote to the Administrator, Veterans Administration that the demotion be "considered an adverse action and processed accordingly." [See Exhibit "D" attached p.2]

Instituting and processing an adverse action is governed by Department of Medicine and Surgery, Program Guide, "Processing Disciplinary Actions and Appeals", MP5, Part i, Chapter 2.03 provides, in pertinent part:

> "The procedural requirements prescribed by the Civil Service Commission [CSC] are mandatory. Failure to meet any one of these requirements will result in reversal at any appellate level regardless of the merits of the case. All of the CSC requirements are included in MP-5, Part I, Chapter 12. Chapter 12 also includes VA policy that is over and beyond that required by the CSC. These VA policies and procedures are also mandatory as the Commission has ruled that agencies are bound by their own policies and procedures."

Hence, the Administrative Hearing given to MRS. ROGERS on her grievances and on the adverse actions are governed by the regulations of the Civil Service Commission and the VA, including the Federal Personnel Manual. All of these regulations place the burden on management to show facts justifying the adverse action. [See Exhibit "E" attached.]

When Plaintiff's representative stated that the burden of proof fell upon Mr. Neal, management's representative, to justify adverse actions [Reporter's Transcript of Hearing pp. 610-630], management objected that the procedural protections afforded to an employee under the rules had been waived by Plaintiff. [Reporter's Transcript of Hearing p. 639, 1. 24-25; p. 640, 1. 1-13] The Hearing Officer ruled that MRS. ROGERS had the burden of proof on the adverse actions. [Reporter's Transcript of Hearing p. 654, 1. 16-17] Acting under the mistaken belief that the adverse actions which included the reassignment, demotion, denial of step increase, and unsatisfactory proficiency rating went beyond the scope of the hearing, the Hearing Officer stated:

> "I cannot allow the introduction or expansion of other issues not related to the eight grievances. I want to strongly recommend to you that you prosecute and duly proceed with the advancement of your case. If you do not, I will have no choice but to terminate this grievance hearing." [Reporter's Transcript of Hearing p. 655, 1. 21-25; p. 656, 1. 1-2]

Contrary to the position taken by Mr. Neal, Plaintiff as early as March 15, 1972, took the position that she was subjected to adverse actions, taken in violation of rules

and regulations. And contrary to the ruling of the Hearing Officer, the issues before him, as directed by this Court, included the adverse actions.

CONCLUSION

Plaintiff has not been afforded a full and fair hearing of all of her grievances. This Court should rule that Plaintiff may proceed with the case before the court.

Respectfully submitted,

/s/ W. James Ware

W. JAMES WARE, a member of the firm of SPAETH, BLASE, VALENTINE & KLEIN, A Professional Corporation, Attorneys for Plaintiff

624 Cornelia Court
Mountain View, Ca. 94040
June 26, 1991

BY CERTIFIED MAIL

Dr. R. Burr
787 West Fremont Avenue
Sunnyvale, Ca. 94087

Dear Dr. Burr:

I received your letter dated June 13, 1991, in which you inform me that you are unable to retrieve my records. I have a legitimate interest in the information you used to make your diagnosis. In my letter dated June 11, 1991, I assured you that "I am willing to pay a reasonable fee based upon the actual time and preparation for these records." An enclosed copy of your billing to the U.S. Department of Labor indicates that you spent a period of three (3) hours to make your report and study these records.

I will accept your offer in Your june 13, 1991 letter for "...some specific information you wish transmitted to your doctor...". Therefore, I am requesting copies of all notations made by you in my medical records pertaining to the three interviews I had with you in 1977. Your billing states that you spent a total of four (4) hours on my scheduled visits. Please send these records to my physician, Dr. Frank Perlroth. My offer of payment still stands for this professional service.

Sincerely,
/s/ Lynette Rogers
Mrs. Lynette Rogers

LR:vs
Enclosure (1)
cc: Dr. F. Perlroth

ROBERT C. BURR, M.D.
PSYCHIATRY
787 West Fremont Avenue
Sunnyvale, California 94087
(408) 732-8220

June 27, 1991

Lynette C. Rogers
624 Cornelia Court
Mountain View, California 94040

Dear Mrs. Rogers:

I received your letter June 26, 1991. Although I told you in my prior letter that I can not retrieve your records and at this point I am unable to locate them, you seem to have a pressing interest in whatever information is in these records. I must tell you that I have made some additional attempt to find your recores and it is my opinion at this time that they may have been destroyed or else stored in a place that is very difficult to access.

Mrs. Rogers, if you are involved in some kind of attempt to reopen your case or if my report is seriously important to you for some legal reason, I would suggest that you make an attempt to get a copy of my report from the U.S. Department of Labor Employment Standards Administration, Office of Workers' Compensation Program, 200 Constitution Avenue, S.W. Room S3520, Washington, D.C. 20211. That is the location where I mailed my initial report 14 years ago. I also would be glad to discuss the matter with you in person at no charge at my office, and if you want to do that just call and make an appointment.

The fact of the matter is, Mrs. Rogers, that I am unable to locate your records, and despite the fact that you are very

interested in seeing them, it istill true that I can not find them.

Again, please call me as we can talk this over personally or come in at no charge and I will be glad to discuss it with you if that would be helpful.

Sincerely,
/s/Robt Br
Robert c. Burr, M.D.
D.A.B.P.N.P.

RCB/th

MOTION NO. 1

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 73-0739 CFP, and I have personal knowledge of the following facts, that:

2. I have in my possession a satisfactory reference from Sequoia Hospital, Redwood City, where I worked in 1960 in a temporary position pending meeting the State of California's requirements for licensure. This reference is in the MOTIONS before this Court.

3. I have in my possession a satisfactory reference from El Camino Hospital, Mountain View, where I worked in a temporary position through the years of 1961-1964, pending completion of a B.Sc. Nursing Program at San Jose State University. This reference is in the MOTIONS before this Court.

4. I have in my possession a satisfactory reference from Kaiser Hospital, Keily Boulevard, Santa Clara, with reference to the period of a temporary position in the years of 1964-1965 pending completion of a B.Sc. Nursing Program at San Jose University.

5. I personally requested the Chief of Personnel, VA Hospital, Palo Alto, to obtain a reference from Kaiser Hospital, San Francisco, in 1968. This request is in the MOTIONS before this Court. I do not, however, have a copy of this reference in my possession.

6. I also do not have in my possession a reference from agents of the Nursing Department, San Jose State University, since I neither requested nor authorized the VA to obtain such a reference. The VA requested that I

supply them with a copy of my college transcripts which I did.

7. I do have a copy in my possession of a satisfactory reference from my nursing school in India.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, Plaintiff pro se

EX. 8, DECLARATION "C" OF LYNETTE ROGERS

LYNETTE ROGERS, pro se
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA [SIC]

LYNETTE ROGERS,
Plaintiff, pro se
v.
RICHARD L. ROUDEBUSH, ADMINISTRATOR, VETERANS AFFAIRS; JOHN D. CHASE, M.D., CHIEF MEDICAL DIRECTOR, VETERANS AFFAIRS; et al; RALPH M. HARTMAN, DIRECTOR OF WORKERS' COMPENSATION PROGRAM; GERALD T. CULLEN, DEPUTY COMM., et al.,
Defendants

Civ. No. 94-16253
AFFIDAVIT

I, LYNETTE ROGERS, declare:

That I am the appellant in the above civil case and have personal knowledge of the information submitted here, that:

1. Since 1974, I have been unable to obtain full-time employment because of the burden I bear with two stigmas that have a direct bearing on my competency and dependability as a nurse.

2. That in October of 1977, I had the opportunity to obtain full-time employment but I had only been in this capacity for approximately four (4) months when my supervisor started to look into employees' backgrounds and reasons or their discharge.

3. I have had no fringe benefits, and have known previously to

have gone between 30 - 40 miles to get one or two days work.

4. I have had to carry all my health insurance. And, when sick, I receive no pay since I am a part-time employee.

5. In 1980, I sought and received applications from five health agencies, but all required me to list reasons for leaving past employment.

I declare that the above is true and correct to the best of my knowledge, and do so under penalty of perjury by the laws of the State of California on this day of September 9, 1994.

_____

LYNETTE ROGERS, pro se

[Notarized by Long Fa Hwang on 9/9/94]

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

LYNETTE ROGERS, ***pro se***
Petitioner.

In Re ROGERS

PETITION FOR
EXTRAORDINARY WRIT

ADDENDUM Z

MOTION NO. 2

C-73-20374 WAI

TO THE HONORABLE JUSTICES
OF THE SUPREME COURT

LYNETTE ROGERS, ***pro se***
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

LYNETTE ROGERS, *pro se*
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff
vs.

RICHARD L. ROUDEBUSH, Administrator, Veterans Affairs; JOHN D. CHASE, M.D., Chief Medical Director, Veterans Affairs; et al.
Defendants.

Civil No. 73-0739 CFP
THREE JUDGE COURT
MOTION NO. 1

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT AND ORDER [F.R.C.P. Rule 60(b)(4)].

Z

MOTION NO. 2

TABLE OF CONTENTS

	Page(s)
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii-vi
APPENDIX-INDEX	vii-x
PRELIMINARY STATEMENT OF PLAINTIFF`S SECOND MOTION	1
AMENDMENTS TO ORIGINAL PLEADING ARE PERMITTED UNDER 28 U.S.C.A. F.R.C.P. RULE 15(c)	3
STATEMENT OF FACTS	6
ARGUMENT	10
I. The Court`s Order in is No. C 83-20374 WAI Invalid Since the Court Lacks Subject-matter and Personal Jurisdiction over Members of the Disciplinary Boards.	10
A. San Jose State Univer -sity is a Public Institution in the State of California.	13
B. The Department of Nursing, SJSU, is Dependent upon the State of California for Funds from the State Treasury.	14
C. The State of California, Through the Board of Registered Nursing, Subjected Licensed Nursing Students to Unequal or Unfair Treatment by the State.	16

D. Nursing Faculty Agents, Under Color of State Law, Conspired with Discriminatory Intent, to Deprive Plaintiff of her Rights Secured by the Fourteenth Amendment. 17

E. Plaintiff has a Constitutional Right in Relation to the State to be Free from Discrimination in Public Hiring. 21

SUMMARY 23

PRAYER FOR RELIEF 23

APPENDIX-INDEX

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES — Page(s)

Adams v. Southern California First NationalBank 21
F. 2d. 324, 329 (9th Cir. 1973)

Aldinger v. Howard 4
96 S.Ct. 2413 (1976)

Arnold v. Intern. Business Machines . . 21
637 F. 2d. 1350, 1355 (9th Cir. 1981)

Ascherman v. San Francisco Medical . . 13
Society 114 Cal. Rptr. 681, 197 (1923)

Brandon v. Holt 3
105 S. Ct. 873 (1985)

Cannon v. University of Chicago 7
559 F. 2d. 1063 (7th Cir. 1976)

Conley v. Gibson 12
78 S. Ct. 99, 102 (1957)

Connerly v. Westinghouse Electric Corp. . 9
623 F. 2d. 117, 120 (9th Cir 1980)

De Malherbe v. Intern. U. of Elevator Constructors 5
440 F. Supp. 1355 N.D. California (1978)

Id. at 1354 5

Division of Medical Quality v. 11
Gherardini App. 156 Cal. Rptr. 55, 57 in Note 1

Drumright v. Padzieski 4
436 F. Supp. 310, 311 (1977)

Erie R. Co. v. Tompkins 10
58 S. Ct., 817 (1938)

MOTION NO. 2

Page(s)

Gibson v. United States 9
781 F. 2d. 1334, 1341 (9th Cir. 1986)

Hampton v. Hanrahan 3
522 F. Supp. 140 (1981)

Hannon v. Turnage 10
892 F. 2d. 653, 655 (7th Cir. 1990)

Id. at 657 11

Hoffman v. Halden 2
268 F. 2d. 280 (9th Cir. 1959)

Ins. Corp. of Ireland v. Compagnie Des Bauxites 4
102 S.Ct. 2099, 2104, 2105 (1982)

Jackson v. O`Bannon 13
633 F. 2d. 329, 330 (1980)

Mitchell v. Greenough 2
100 F. 2d. 184 (9th Cir.)

Moose Lodge No. 107 v. Irris 21
92 S. Ct. 1965, 1971

Owen V. United States 6
177 F. 2d. 692, 693 (1949)

Paul v. Davis 17
96 S. Ct. 1155, 1165 (1976)

Perry v. Golub 12
400 F. Supp. 409, 418 (1975)

Phillips v. Fisher 12
445 F. Supp. 552, 554 (1977)

Reed v. Molony 15
101 P. 2d. 175, 38 C.A. 2d. 405 (1940)

Page(s)

Rutledge v. Boston Woven House and Rubber Co. 9
576 F. 2d. 248, 250 (9th Cir. 1978)

Id. 9

Silva v. Vowell 18
621 F. 2d. 640, 641 (5th Cir. 1980)

Tongol v. Ursery 18
601 F. 2d. 1091, 1099 (1979)

Supra at 1097 19

United States v. Classic 20
313 U.S. 1031-32 (1941)

V.T.A. Inc. v. Airco, Inc. 12
697 F. 2d. 220 (CA Colo 1979)

CODES

5 U.S.C.A.

<5596 . . . . . 1, 4, 23

28 U.S.C.A

<1331 4

<1343 3

<1343(3) 13

<1343, subd. (a) (1)(2)(3)(4) 4

<1391 (b) 1

<1404 1

MOTION NO. 2

Page(s)

38 U.S.C.A.

Ch. 73 <4105(1) 10

Ch. 74 <7402 10

42 U.S.C.A.

<1891 23

<1943(3) 23

<1981 . . . . . 4, 23

<1983 . . . . . 4, 21, 23

<1985 21

<1985 (1)(2)(3) 4

<1985(2)(3) 22

<1986 4

<1988 4

F.R.C.P.

Rule 15(c) 3

Rule 60 (b)(4) 1

PHAMPLETS/REGULATIONS

MP-5, Part II, Chapter 2 C(1) (1979) . 10

Senate Report No. 1378 U.S.C.C.A.N. Vol. 110 (1964) 17
(Labor and Public Welfare Committee)

MOTION NO. 2

Proceedings and Debates of the 89th Congress Second Session

CONSTITUTION

First Amendment 4, 7

Fourth Amendment 4

Fifth Amendment 4, 18

Ninth Amendment 4

Fourteenth Amendment 4, 13, 17, 18

<1 12

ACTS/LAWS

Nurse Training Act of 1964 . . . . . 3, 12

Freedom of Information Act 6

P.L. 88-581 . . . . . 12, 18, 19

Section 805 (a) 18

Section 842 20

(64) U.S.C.C.A.N. (78 STAT) 908 18

No. 1378 U.S.C.C.A.N. Vol. 110 (1964) . 18

STATE OF CALIFORNIA GOVERNMENT

Cal. Civ. Code

<51 4

Cal. Bus. & Prof. Code

Art. 6, Revenue <2810 (West 1990) 15

MOTION NO. 2

	Page(s)
<100 (West 1990)	14
<107.5	15
<1402	15
<1433 (1964)	17
<2052	11
<2100	11
<2100-5	11
<2108, (1983)	11
<2703	15
<2715	15
<2732.1 (b) (West`s 1990)	19
<2761, Grounds for Discipline, Evidence of Conviction .	2
<2765	2
<2786.6 (b) (West`s 1990)	16
<2810 Art. 6, Revenue (West 1990)	16
<2812	15
<2814	15
<2815.1	16
<2816	15, 16
<2818	16
Cal. Ed. Code <669003.4 (Deering 1987)	13

MOTION NO. 2

West`s Ann. Gov. Code 14
<11152, Chapter 2, State Departments

California Constitution

Art. 1 <1 4

California Civil Rights Act 4

MOTION NO. 2

Civil No. C83-20374 WAI

APPENDIX/INDEX

Exhibit(s)		Page(s)
1.	Judgment No. C83-20374 WAI dated April 19, 1984.	1
2.	Order No. C83-20374 WAI dated April 19, 1984.	2-5
3.	Order No. C-84-1519 JPV, dated July 10, 1985.	6
4.	Reporter's Transcript No. C-84-1519 JPV, dated June 20, 1985 (pp. 1-11).	7-17
5.	Judgment No. 697-87 C, dated November 16, 1990.	18
6.	Memorandum to Chief Medical Director from L. Rogers, RN, dated July 15, 1973.	19-22
7.	"To Whom It May Concern" Declaration"A" of Lynette Rogers.	23-24
8.	Affidavit of Edward S. Piggins dated 21 October 1991.	25
9.	"To Whom It May Concern" Ex. 10, Declaration "D" of Lynette Rogers from Motion No. 1.	26-42
10.	Letter to Albin E. Danell, Esq., from William T. McGivern, Chief Asst. U.S. Attorney, dated February 15, 1984.	43-44
11.	"To Whom It May Concern" Ex. 12, Declaration "E" of Lynette Rogers from Motion No. 1.	45

MOTION NO. 2

Exhibit(s)		Page(s)
12.	"To Whom It May Concern" by John W. Gillbaugh, dated April 1, 1979.	46
13.	Grievance, to A.M. Gottlieb, M.D., Director, from Lynette Rogers, RN, dated June 23, 1972.	47-48
14.	Letter to Lynette Rogers, RN, from A.M. Gottlieb, M.D., dated July 5, 1972.	49
15.	Letter to A.M. Gottlieb, M.D., from Executive Board, Local 2110 AFGE dated July 21, 1972.	50
16.	Letter to A.M. Gottlieb, M.D., from F. Waltjen, Consultant, dated September 11, 1972.	51-52
17.	Letter to F. Waltjen, Consultant, from Franklin Johnson, M.D., dated September 29, 1972.	53
18.	Letter to A.M. Gottlieb, M.D., from F. Waltjen, Consultant, dated October 10, 1972.	54-55
19.	Letter to Lynette Rogers, RN, from A.M. Gottlieb, M.D., dated July 11, 1972.	56-57
20.	Letter to Hospital Director from Helen F. Hennessy, RN, Chief Nurse, dated October 8, 1970.	58-59
21.	Declaration "B" of Lynette Rogers [Attach. a,b].	60-63

MOTION NO. 2

Exhibit(s)		Page(s)
22.	VA Form 2815-101 EMPLOYEE SERVICE STATEMENT.	64-65
23.	VA Form 5-4652-3 Request for Personnel Actions.	66-67
24.	VA Form 5-4650 Notification of Personnel Action.	68
25.	VA Form 5-4650 Notification of Personnel action.	69
26.	VA Form 10-2543 BOARD ACTION.	70-71
27.	BOARD OF QUALITY ASSURANCE, May 15, 1991. Affidavit of E.S. Piggins, Jr., with Certificate from the Board of Quality Assurance, dated May 19, 1991.	72-73
28.	HEARING, June 19, 1975, Dr. Ernst Burian's testimony p. 322.	74-77
29.	Letter to Lynette Rogers, RN, from the Honorable Charles S. Gubser, M.C., dated September 26, 1966.	78
30.	Letter to Lynette Rogers from Grace E.M. Staple, RN, Head, Department of Nursing, dated February 12, 1962.	79
31.	Letter to Trainee L. Rogers from Jessie M. Scott, Chief, Division of Nursing, Department of Health, Education and Welfare.	80-81
32.	B.S. Nursing Check List of courses.	82
33.	Letter to Dr. John W. Gillbaugh, from L. Rogers dated March 12, 1979.	83-87
34.	Declaration "C" of Lynette Rogers.	88

MOTION NO. 2

Exhibit(s)		Page(s)
22.	VA Form 2815-101 EMPLOYEE SERVICE STATEMENT.	64-65
23.	VA Form 5-4652-3 Request for Personnel Actions.	66-67
24.	VA Form 5-4650 Notification of Personnel Action.	68
25.	VA Form 5-4650 Notification of Personnel action.	69
26.	VA Form 10-2543 BOARD ACTION.	70-71
27.	BOARD OF QUALITY ASSURANCE, May 15, 1991. Affidavit of E.S. Piggins, Jr., with Certificate from the Board of Quality Assurance, dated May 19, 1991.	72-73
28.	HEARING, June 19, 1975, Dr. Ernst Burian's testimony p. 322.	74-77
29.	Letter to Lynette Rogers, RN, from the Honorable Charles S. Gubser, M.C., dated September 26, 1966.	78
30.	Letter to Lynette Rogers from Grace E.M. Staple, RN, Head, Department of Nursing, dated February 12, 1962.	79
31.	Letter to Trainee L. Rogers from Jessie M. Scott, Chief, Division of Nursing, Department of Health, Education and Welfare.	80-81
32.	B.S. Nursing Check List of courses.	82
33.	Letter to Dr. John W. Gillbaugh, from L. Rogers dated March 12, 1979.	83-87
34.	Declaration "C" of Lynette Rogers.	88

MOTION NO. 2

Exhibit(s)		Page(s)
35.	Letter to Lynette Rogers from John W.Gillbaugh, Dean of the College, dated August 15, 1966.	89
36.	PROFESSIONAL NURSE TRAINEESHIP. PROGRAM	90-96
37.	Declaration "D" of Lynette Rogers [Attach. "a,b"].	97-99
38.	Letter to Lynette Rogers from R. . Michael Buggy, RN, Board of Nursing and Nurse Registration.	100
39.	Letter to Lynette Rogers from J. William Dusel, Executive Vice President, SJSU, dated July 3, 1967.	101
40.	Declaration "E" of Lynette Rogers [Attach. "a-d"].	102-108
41.	Letter to Lynette Rogers from Carl Hollenhorst, Chief, Personnel Division, dated April 9, 1968.	109
42.	Declaration "F" of Lynette Rogers.	110
43.	Letter to A. June Miller, RN, Asst. Chief, Nursing Service, from Lynette Roger dated 7/2/1968.	111-112
44.	General Information On Employment Registered Nurses in the Veterans Administration.	113-114
45.	VA Form 5-4650 NOTIFICATION OF PERSONNEL ACTION.	115
46.	Declaration "G" of Lynette Rogers [Attach. "a,b"].	116-118

LYNETTE ROGERS, *pro se*
624 Cornelia Court
Mountain View, CA 94040
(415) 967-5426

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
vs.
RICHARD L. ROUDEBUSH, Administrator, Veterans Affairs; JOHN D. CHASE, M.D., Chief Medical Director, Veterans Affairs; et al.,
Defendants

Civil No. C 83-20374

MOTION NO. 2

THREE JUDGE COURT

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT AND ORDER [F.R.C.P. Rule 60(b)(4)]. (Question of Constitutionality of State Law under the Fourteenth Amendment to the United States Constitution.)

PRELIMINARY STATEMENT TO PLAINTIFF'S SECOND MOTION

Plaintiff submits her second Motion (No. 2) to a three-judge panel to set aside the judgment obtained in Federal District Court Northern District of California on April 19, 1984, in No. C 83-20374 WAI [Ex. 1], under Rule 60(b)(4). This order resulted from a three-page opinion of the Court and is submitted here for the Court's instruction only. [Ex. 2]. A subsequent judgment was rendered in the same action in C-84-1519 JVP on July 10, 1985 [Ex. 3] following a Hearing on June 20, 1985, and is submitted here for the Court's instruction also. [Ex. 4]. However, if this Honorable Court declares the judgment in No. C-83-20374 WAI void, then axiomatically, the second judgment in C-84-1519 JPV will also be void. Therefore, plaintiff reserves any argument as to this judgment at this time. Plaintiff asserts that she is entitled to reinstatement and equitable relief under 5 U.S.C.A. of the Administrative Procedure Act §§702, 704, and 5 U.S.C.A. §5596. In her "Prayer for Relief" plaintiff enumerates further lawful entitlement to make her whole as mandated by the Back Pay Act of 1966.

Plaintiff claims venue under 28 U.S.C.A. §1391 (b). However, since her actions were filed in two different districts, the Federal District Courts of San Jose and San Francisco, she is amenable to a change of venue under 28 U.S.C.A. §1404 for the convenience of all parties in the interest of justice.

Plaintiff withholds any direct attack upon the Judgment in C-83-20374 WAI even though she shows, by relevant evidence, that this judgment was obtained by defendants' fraud upon the

Court. Since plaintiff received the last negative decision from the United States Claims court dated, November 16, 1990 [Ex. 5], the government obtained a complete revision of 38 U.S.C.A., Chapter 73, by Pub. L. 102-40. Plaintiff made this discovery in December of 1991. This action, although commendable for accountability within the VA, is furthermore reflective of another example of the several impediments that have been presented, by defendants' circumvention, through a series of unconscionable schemes to obstruct justice and to deny her any relief for violations of her civil rights. In all proceedings, both at the administrative and judicial levels, defendants' perjury, subornation of perjury, and conspiracy are material to the issues under consideration. In the case of Hoffman v. Halden, 268 F. 2d. 280 (9th Cir. 1959), a quotation in N. 13 from Mitchell v. Greenough, 100 F. 2d. 184 (9th Cir.), is as follows:

> The question is then whether or not a conspiracy to secure a conviction of a criminal offense in a court having jurisdiction thereof and of the defendant by knowingly using perjured testimony to convict an innocent person, is a conspiracy for the purpose of impeding the due course of justice in an attempt to deny any citizen the equal protection of the laws. It is only in case of a conspiracy to effectuate such a purpose that one damaged in his person or property, or deprived of his rights as a citizen of the United States, is entitled to maintain an action for damages in the Federal courts under the Statute.

Plaintiff alleges that her professional career in nursing has been drastically

curtailed because defendants imputed possible criminal conduct when she corrected, what she believed to be, a possible typographical error on the orders typed by the ward secretary, Mathilda Halper, Ward 2C2. Her reply to the admonishment she received for this change specifies that she used her professional judgment with the safety and welfare of this patient in mind. [Ex. 6.] Her declaration asserts that not only was Dr. Ernst Burian not in control of his own orders, but also, the amount of medication errors on veterans was unduly hazardous. [Ex. 7, Decl. "A"]. Plaintiff has been unnecessarily inflicted with sustained duress because, under Cal. Bus. & Prof. Code §2761, Grounds for Discipline, Evidence of Conviction, the law states, that:

> The board may take disciplinary action against a...licensed nurse...for any of the following:
> (a) Unprofessional conduct, which includes, but is not limited to, the following:
> (2) A conviction of practicing medicine without a license... in which event the record of conviction shall be conclusive evidence thereof.

Under §2765 Conviction Defined; Authority to Suspend, Revoke... license:

> A plea...of nolo contendere made to a charge substantially related to the...functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article... The board may order the license...suspended or revoked...or the judgment of conviction has been affirmed on appeal...under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or

her plea of guilty and to enter a plea of not guilty...or setting aside the verdict of guilty...

Plaintiff's transcript in her alleged Disciplinary Board Hearing in 1975 showed that she did just that on the advice from her counsel. With respect to Dr. E. Burian's typographical medical orders, however, she never appealed the court's Order on February 16, 1977, because defendant VA misrepresented the composition of the alleged Disciplinary Board holding that its standing was valid by alterations of material facts on government documents.

Plaintiff therefore requests the three-judge panel to determine whether plaintiff's allegations in her three Motions support her contention that this conspiracy was to commit a substantive offense through a series of overt acts in furtherance of the conspiracy and also to determine whether this conspiracy is in the nature of a criminal or civil offense. State agents, under color of state law, in concert with private and federal agents were party to this conspiracy.

AMENDMENTS TO ORIGINAL PLEADING ARE PERMITTED UNDER 28 U.S.C.A. F.R.C.P. RULE 15(c).

Plaintiff invokes the Court's impartial powers under Rule 15 of the F.R.C.P. In Hampton v. Hanrahan, 522 F. Supp. 140 (1981), it was held that the rule "...provides for liberal allowance of amendments in order to meet the requirements of justice." Also, the Supreme Court in Brandon v. Holt, 105 S. Ct. 873 (1985) held, that parties are entitled to amend their pleadings to conform to the proof. Therefore, plaintiff submits the following amendments to conform to the proof in support of her three Motions (No.'s 1, 2,

and 3). In her original pleading, filed on May 3, 1973, in Civ. No. 73-739 CBR, plaintiff asserted jurisdiction under Title 28, United States Code §§1331, 1343, 1346 and 1361. Ancillary jurisdiction was plead under the California Constitution of Article 11 §1, and California Civil Code §§43 and 44. Plaintiff now affirms that 28 U.S.C.A. §1346(a)(2) and C.C.C. §44 are inapplicable. Plaintiff seeks a grant of an amendment in conformity with the proof under the subdivisions of 28 U.S.C.A. §1343 since she discovered new facts in 1991 which entitles her to a revival of her original action on May 3, 1973, and since this fact arose out of the same conduct of federal defendants' conspiracy. Therefore, plaintiff petitions the Court to maintain personal jurisdiction over a VA physician, Dr. Ernst Burian, since these facts are central to this party upon which plaintiff's discharge was sustained by the Court. In Ins. Corp. of Ireland v. Compagnie Des Bauxites, 102 S.Ct. 2099, 2104, 2105 (1982), the Supreme Court held, that:

> The requirement that a court have personal jurisdiction flows...from the Due Process Clause. The personal jurisdiction requirement recognizes and protects and individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that "the maintenance of the suit...not offend 'traditional notions of fair play and substantial justice'." (Citations omitted.)

Plaintiff, therefore, seeks an amendment to her original pleadings under Rule 15 (c) to include under 28 U.S.C.A. §1343, subd. (a)

(1)(2)(3) and (4), and their corresponding jurisdictional counterparts under 42 U.S.C.A. §§1981, 1983, 1985 (1)(2)(3), 1986 and 1988 inclusively, 5 U.S.C.A. §5596 and 38 U.S.C.A. Plaintiff asserts Constitutional violations under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution. Plaintiff asserts an amendment for independent jurisdiction under the California Constitution Art. 1 §1 Cal. Const. (West's 1982) and the California Civil Rights Act, Cal. Civ. Code §51. 38 U.S.C.A. In Aldinger v. Howard, 96 S.Ct. 2413 (1976), the Supreme Court held, that:

> When grant of jurisdiction to federal court is exclusive... judicial economy and convenience will be served by entertaining "pendent party" jurisdiction...[since]...only in federal court may all claims be tried together. (citations omitted).

In Drumright v. Padzieski, 436 F. Supp. 310, 311 (1977) it was held that: "Reasons for exercising pendent jurisdiction are especially strong when the statutory claims raise issues of federal policy." Plaintiff alleges that a question of federal policy is indeed raised in her claims, and this is presented here in her second Motion (No. 2) under the Nurse Training Act of 1964. Plaintiff also seeks to extend jurisdiction under 28 U.S.C.A. §1331 to Federal defendants of the Office of Workers' Compensation Programs of the Department of Labor (hereinafter DOL). Agents of DOL, in joint conspiracy with VA agents, and with discriminatory intent with state agents acting under color of state law, violated her rights under the Fourth Amendment to the Constitution. DOL solicited the professional services of a community physician alleged to be an "impartial" specialist, but who, in

fact, was employed by the VA as a fee-basis consultant. This physician, Dr. Robert C. Burr of Mid-Peninsula Psychiatric Medical Clinic, Sunnyvale, California, not only violated plaintiff's constitutional rights to privacy under state law, but also joined in the conspiracy by using information from SJSU to justify his prejudicial report and label her with another stigma. Dr. R. Burr's true role in this joint conspiracy with VA agents was not discovered by plaintiff until October 21, 1991. [Ex. 8]. Moreover, DOL had no legal authority to schedule these visits for plaintiff. Plaintiff seeks to amend her complaint with respect to federal defendants from their personal capacity to that of official capacity since officials in VA Central Office in Washington D.C. were not only aware of VAPA's illegal and discriminatory conduct, but also, in conspiratorial complicity, provided them with alterations of material facts on government documents to obstruct the due course of justice in the Federal courts. [Ex. 9]. Also, the ruling in De Malherbe v. Intern. U. of Elevator Constructors, 440 F. Supp. 1355 N.D. California (1978) is applicable to the reasons to support this amendment. This case also involved "...alleged discrimination in hiring by defendants [and] related back to original complaint based on civil rights... statutes...". "Normally, an amendment which merely changes the capacity in which the defendant is sued relates back because the facts from which the claim arises are unchanged and the defendant had notice of those facts from the beginning." (Citation omitted.) Id. at 1354. Both VA and DOL had notice of these facts through their respective administrative processes, and from her several amended pleadings filed

subsequently in Federal courts. Therefore, these federal agents are responsible, in their official capacities, for conspiracy and fraud to violate plaintiff's civil rights. When plaintiff attempted to obtain this information from DOL, who received this information from the VA without her knowledge or consent pertaining to her student years at SJSU, she was threatened with sanctions through the judicial process by defendants' counsel if she persisted in her attempts to obtain this information from Dr. R. Burr. [Ex. 10]. This is another example of the duress she sustains in order to seek vindication for violations of her civil rights by denial of her due process rights under the Fourteenth Amendment.

Plaintiff listed "Does one through five" in her original pleading on May 3, 1973. Therefore, the inclusion of these parties is not unreasonable especially since she had valid reasons for not previously naming State agents in light of her declaration. Plaintiff only obtained her records under the Freedom of Information Act (hereinafter FOIA) in 1979, in which she later learned that two references listed as "guarded" and "poor" were missing from her OPF. Plaintiff's records show that following discovery of these missing references, and which Dr. R. Burr made reference to in his report, she went to see the Chairperson, Dr. Fay Bower, of the DN, SJSU. Plaintiff made inquiries and requested any available copies of records the DN may have maintained on plaintiff. [Ex. 11]. Furthermore, plaintiff also contacted Dr. John Gillbaugh, previous Dean of the college, SJSU, with reference to her grievance regarding events at SJSU. Dr. Gillbaugh provided a statement dated April 1, 1979, to help clarify these events during this period of time. [Ex.

12]. Moreover, when plaintiff filed her extended brief on April 17, 1985, in which she alleged civil rights violations in conspiracy with State agents, the Court denied her brief and chose the path of expediency, adhering to form over substance, thereby subordinating her Constitutional rights in favor of strict compliance with page length in Civ. No. C-84-1519 JVP. Therefore, these defendants are not new parties, neither is her action new. Furthermore, all federal and state defendants' fraud is so pervasive, plaintiff is entitled to relief. In Owen V. United States, 177 F. 2d. 692, 693 (1949), the Tenth Circuit Court held, that:

> It is true that in proper proceedings, equity will set aside a judgment obtained by fraud regardless of the term of entry.

STATEMENT OF FACTS

Plaintiff alleges that the State of California, through the regulatory powers of the members of the Board of Registered Nursing (hereinafter BRN), discriminates in the educational process between nursing students who qualify for Federal funds and those students who qualify for state funds in a baccalaureate nursing program. "The 'state action' requirement of Civil Rights Act of 1891 requires a showing of some nexus between the State and the challenged conduct". Cannon v. University of Chicago, 559 F. 2d. 1063 (7th Cir. 1976). Plaintiff also alleges that the state action resulted from the State of California, through its officers of the Board of Registered Nursing, promulgated different laws for unlicensed and licensed nurses' education in a baccalaureate nursing

program. Therefore, the latter group were denied equal privileges, immunities, and protection of the laws, under the Fourteenth Amendment, as they participated with unlicensed nurses in the same baccalaureate nursing program at San Jose State University (hereinafter SJSU). The common nucleus of operative fact is that agents of the Department of Nursing (hereinafter DN), SJSU, under color of state law, and in conspiracy with private and federal agents, abridged plaintiff's First Amendment rights by willful intent and an invidious discriminatory animus, thereby depriving her of employment in public hiring and fulfilling her obligations under the Nurse Training Act of 1964. Federal defendants of the Veterans Affairs Hospital, Palo Alto, (hereinafter VAPA), took prohibited personnel actions, by conspiracy, against plaintiff in the form of a reassignment, constructed an Unsatisfactory Proficiency Report by perjury, withheld her periodic step increases, and removed her from clinical privileges by a perjured statement to the Court thereby decreasing the nature and quality of plaintiff's duties, and segregated and confined her to a small room for approximately one hundred and six (106) days. As a result of all defendants' egregious conduct, plaintiff has been deprived of equal privileges, immunities and protection under the Fourteenth Amendment to the Constitution. Defendants VAPA inflicted plaintiff with a stigma, thereby diminishing her professional reputation, and provided the means to inflict further injury upon plaintiff by providing information, without her consent or knowledge, to a Dr. Robert C. Burr, psychiatrist, of Sunnyvale, California. On the basis of this information in her records pertaining to SJSU, plaintiff sustained further injury by being burdened

with another stigma thereby diminishing her standing as a person in her profession and in the community, and with her family.

The parties to this conspiracy are as follows:

State agents: Helen P. Stevens, RN, Acting Department Head, SJSU; Grace Staple, RN, Chairperson; Mrs. Dufour, RN, Instructor.

Federal agents: Helen F. Hennessy, RN, Chief, Nursing Service, VAPA; H. Johnson, RN, Asst. Chief Nurse; Coordinators: D. von Morpurgo, RN, A. J. Miller, RN, and Junne Cramer, RN; Head Nurses: Esther McShan, RN, M. Elliott, RN, N. Kallstrom, RN, E. Zeilski, RN.

VAPA Physicians: A.M. Gottlieb, MD, Director; F. Johnson, MD, Chief of Staff; E. Burian, MD,; Carl P. Hollenhorst, Chief, Personnel Officer; Larry Rouse, 1-O; and R. Burr, MD.

On June 23, 1972, plaintiff wrote a letter to Dr. A.M. Gottlieb, Hospital Director, regarding unwarranted disclosure of plaintiff's past employment record. [Ex. 13]. Plaintiff has established that she was fired from Kaiser Hospital, San Francisco, on March 8, 1968, because of her student experiences at SJSU (See Motion No.1). Dr. A.M. Gottlieb responded to plaintiff's grievance as acknowledged by a letter dated July 5, 1972. [Ex. 14]. On July 21, 1972, members of the Executive Board of Local No. 2110, AFGE, confirmed that a discussion about plaintiff's past employment (at Kaiser) did occur. [Ex. 15]. On September 11, 1972, plaintiff's representative responded by alleging that plaintiff's professional career was at stake, by unauthorized dissemination of information from her Official Personnel Records (OPF). [Ex. 16]. On September 29, 1972, F. Johnson, MD, replied on behalf of Dr. A.M.

Gottlieb by asserting, that "... management officials...[have]...considerable latitude in utilizing information of record in the Official Personnel Folder in pursuing management objectives." [Ex. 17]. On October 10, 1972, plaintiff pursued her right, asserting that: "...the actual record of the allegations be made available to the appellant." [Ex. 18, see para 3]. On July 11, 1972, plaintiff was informed that she could view the contents of her OPF. [Ex. 19]. However, she found no derogatory information. Instead, she did find a laudable commendation of plaintiff's professional and personal attributes by Chief Nurse H. Hennessy, RN, recommending that she be considered for graduate study in Health Care Administration. [Ex. 20]. Plaintiff was previously denied, by state agents at SJSU, to a right secured by the Nurse Training Act of 1964, to full educational opportunities under this federal statute. Therefore, even though plaintiff continued to be subjected to a series of unjustified personnel actions, she was actively misled by H. Hennessy, RN, CN, that these actions were not because of some unknown derogatory information in her OPF, but rather, the result of bureaucratic resistance to change in that plaintiff was trying to implement the objectives of the Chief Nurse for safe nursing care to veterans. [Ex. 21, Decl. "B"]. In 1979, after plaintiff was discharged four years from the official date of discharge, on November 8, 1975, plaintiff obtained her personnel records from the National Personnel Records Center, St. Louis, MO, under the FIOA. In these records, plaintiff discovered the following material facts:

On VA Form 2815-101, plaintiff's signature is missing. [Ex. 22]. On VA Form 5-4652-3,

the reasons listed for discharge are "misconduct". Plaintiff was never charged with "misconduct". [Ex. 23]. On this same form, the Nature of the Action deletes "Discharge" and the personnel action is changed to "Termination" which is a non-disciplinary action. On VA Form 2815-101 she was alleged to be entitled to a lump-sum refund only, which comports with a discharge for "misconduct" which leaves no entitlement to an annuity. [See prev. Ex. 22]. Also, on VA form 5-4650 [Ex. 24], her annual salary is increased by $1,584.00 to $16,255.00. However, defendants consistently denied her periodic step increases for the previous two years, leaving her salary at $14,671.00. [Ex. 25]. Most important-ly, on VA Form 10-2543, titled Board Action, there were three references listed: "guarded", "poor" and "satisfactory." [Ex. 26]. The "satisfactory" reference was among the records she received. The other two references, which came from SJSU and Kaiser Hospital, remain fraudulently concealed as of this date. In Gibson v. United States, 781 F. 2d. 1334, 1341 (9th Cir. 1986), the Ninth Circuit held, that:

> To make out a claim of fraudulent concealment, plaintiff "must plead with particularity the circumstances surrounding the concealment and state facts showing his due diligence to uncover the facts." Rutledge v. Boston Woven House and Rubber Co., 576 F. 2d. 248, 250 (9th Cir. 1978). Additionally, the plaintiff "must allege facts showing affirmative conduct on the part of defendant which would, under the circumstances of the case, lead a reasonable person to believe that he did not have a claim for relief." Id. See also Connerly v. Westinghouse Electric

Corp., 623 F. 2d. 117, 120 (9th Cir 1980).

Plaintiff alleges that she has met the Ninth Circuit's test for fraudulent concealment. Furthermore, her records, which she has maintained intact, provide relevant evidence to support the fact that the personnel actions taken against her by the VA are totally unjustified and contrary to congressional and public policy.

ARGUMENT

I. The Court's Order in No. C 83-20374 WAI is Invalid Since the Court Lacks Subject-matter and Personal Jurisdiction over Members of the Disciplinary Boards.

Plaintiff alleges that the Court has no jurisdiction over the Chairperson, Donna S. Humes, RN, Beverly A. Freeman, RN, and Margaret Harris, RN, the three members of the alleged Disciplinary Board who recommended that plaintiff be discharged from Federal Service on 9§5§1975. Plaintiff only had constructive and actual notice in the week of May 19, 1991, that the ward physician in Bldg 2, Dr. Ernst Burian, was unlicensed by the State of California to practice medicine. [Ex. 27]. In Hannon v. Turnage, 892 F. 2d. 653, 655 (7th Cir. 1990), VA defendants alleged that Dr. Hannon had no legal standing since he "...failed to meet the appropriate qualifications at the time of appointment." This failure concerned Dr. Hannon's licensure. Similarly, plaintiff, through due diligence, discovered that Dr. Ernst Burian did not have a license to practice in this state. His VA history shows that Dr. E. Burian was practicing in a clinical setting for fifteen (15) years. In her previous Motion (No.1), plaintiff showed

by both federal and state statutory law, that a physician's eligibility for appointment depended upon him having an active and current license to practice. Both the previous federal law under 38 U.S.C.A. Ch. 73 §4105(1), and the present law under 38 U.S.C.A. Ch. 74 §7402, require that a physician must be licensed in a state to qualify for eligibility to an appointment in the Department of Medicine and Surgery (DM&S). Regulations of the VA further hold that if current license is required, a physician must meet this requirement, MP-5, Part II, Chapter 2 (1979). In Erie R. Co. v. Tompkins, 58 S. Ct., 817 (1938), the Supreme Court held, that:

> Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the State.

In Hannon v. Turnage, the court held that "...when Dr. Hannon applied for the VA appointment, he did not meet the qualifcations listed in the United States Code and the VA's own regulations. The VA [therefore] was without authority to hire Dr. Hannon, and his appointment was void from the day he received it." Id. at 657. Therefore, if defendant Dr. E. Burian was not subject to Federal law, he still would be required by the laws of this state which mandatorily requires that he be licensed to practice in California. These requirements are promulgated by the Board of Medical Quality Assurance. In Division of Medical Quality v. Gherardini, App. 156 Cal. Rptr. 55, 57 in Note 1, the functions of the Board are succinctly defined as follows:

> 1. The Board of Medical Quality Assurance is a State agency within the Department of Consumer Affairs, State of California (Bus. & Prof. Code §2100). It is composed

of three divisions: the Division of Medical Quality, the Division of Licensing, and the Division of Allied Health Professions (Bus. & Prof. Code §2100-5).

Under §2108, (1983), the law states, that:

Each division of the board may, within its jurisdiction, adopt, amend, or repeal in accordance with the provisions of the Administrative Procedure Act, such regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of medicine.

Under §2052 the law states, that:

Any person...who diagnoses, treats...or prescribes for any ailment...or other physical or mental condition...without being authorized to perform...is guilty of a misdemeanor.

In Plaintiff's alleged disciplinary Hearing on June 19, 1975, Dr. E. Burian testified that: "...I will write orders...[Ex. 28, Trans. p. 322, Ln. 4-8) and "...I do regular physical examination for all my patients...". [Ln. 11-13]. Dr. E. Burian testified that he had ninety-five (95) patients, of which plaintiff alleges, that approximately half of this number were women.

In plaintiff's first Motion, she requests the Court to maintain personal jurisdiction over Dr. E. Burian. As a result of his unlawful orders, she was denied a substantive right to be free from unwarranted personnel actions which led to her separation from public service, and Constitutional injury by violations of her rights under the Fourteenth Amendment.

In Perry v. Golub, 400 F. Supp. 409, 418

(1975), the court quoting H. Wright and Miller, Federal Practice and Procedure §2948, page 440 (1973) held:

"When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."

Plaintiff respectfully petitions the Court to have this Judgment set aside as void because if members of the alleged Disciplinary Board had no lawful jurisdiction over the subject-matter of Dr. E. Burian's medical orders by Federal, State and VA Regulatory laws since his appointment was void, then the Court, likewise, has no personal jurisdiction either over members of the Board nor their subject matter which was their recommendation that plaintiff be discharged from Federal Service on 9/5/1975. In V.T.A. Inc. v. Airco, Inc., 697 F. 2d. 220 (CA Colo 1979), the Court held, that:

If judgment is void...order based on it is void; if voidness is found relief is not discretionary matter but is mandatory.

Plaintiff alleges that she sustains personal injuries because she has been deprived of due process, equal rights, privileges, and protection by state action under Section 1 of the Fourteenth Amendment to the Constitution; also, by a nexus between State agents, under color of state law, and federal agents to deny her participation in the objectives of P.L. 88-581, the Nurse Training Act of 1964, and employment in public service. Together, state and federal agents engaged in invidious discriminatory conduct for the purpose of infringing her rights and liberty interests secured by the First Amendment to the Constitution. In Phillips v. Fisher, 445 F. Supp. 552, 554 (1977), the court held, that:

A dispute regarding the deprivation of

> such a constitutional right is necessary because it is an express prerequisite of federal jurisdiction under 28 U.S.C.A. §1343... if the denial of a specific constitutional right is alleged, the actions should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts... to entitle him to relief. (quoting Conley v. Gibson, 78 S. Ct. 99, 102 (1957)).

Plaintiff has shown that federal agent defendants violated her due process and equal protection rights under the Fourteenth Amendment by withholding information from state agents, under color of state law, from her in her OPF when she requested access to this information from her OPF and through judicial proceedings. In Jackson v. O'Bannon, 633 F. 2d. 329, 330 (1980), the Court held, that:

> Where plaintiff alleged violation of due process and equal protection clause of Fourteenth Amendment and specific question presented had not been previously ruled upon, nor had state policy in question be subject to any prior decision by the federal court, plaintiff raised a substantial Constitutional claim and District Court had jurisdiction. U.S.C.A. Const. Amend. 14; 28 U.S.C.A. §1343(3).

Plaintiff has been subjected to extreme emotional distress through nineteen (19) years of litigation, and nearly a quarter of a century (25 years) of deprivation of equal protection, privileges and immunities secured by the Fourteenth Amendment by state action and state agents, under color of state law. That state is California. During her employment by the VA, a series of unjustified Personnel actions were taken against her without her knowing the true

reasons for these actions. Neither was she provided the opportunity to explain the events that occurred in the Department of Nursing, SJSU, in 1966-1967. In Ascherman v. San Francisco Medical Society, 114 Cal. Rptr. 681, 197 (1923), the following principle was established:

> It is a fundamental principle of justice that no man be condemned or prejudiced in his rights without an opportunity to make his defense. This rule is not confined alone to courts of justice and strictly legal tribunals which has the power and authority to adjudicate questions involving legal consequences.

A. San Jose State University is a Public Institution in the State of California.

Plaintiff alleges that the State of California actively supports its institutions of higher learning. "The California State Colleges are a unique development of the democratic concept of tax-supported public higher education for all students." (Citation omitted.) "San Jose State College...[now University]...is fully accredited by... the California State Board of Education and a member of other agencies in special occupational fields." (Citation omitted.) Under Cal. Ed. Code §669003.4 (Deering 1987), Elements of Plan (a) "[A] finding..." was required "...as to whether health sciences education enrollment levels are adequate to meet the needs in California for health personnel."

Simultaneously, when the State was anticipating added demands for health care personnel, so was this concern raised at the Federal level. On September 19, 1966, the Hon. Charles S. Gubser, 10th District, California, delivered a speech in the House of Represen-tatives saying, that:

"We are in desperate need of more trained nurses. The Department of Health, Education and Welfare estimates that 21 percent of the nurse requirement in our hospitals is unfilled... Our Federal Government is attempting to alleviate the shortage of nurses... Professional nurse traineeships are offered as incentives for licensed graduate nurses to prepare for teaching, administrative, or supervisory positions... ". Proceedings and Debates of the 89th Congress, Second Session.

Plaintiff, a constituent of the 10th District, California, received a copy of this speech with a letter dated September 26, 1966 from the Hon. Charles S. Gubser. [Ex. 29]. However, plaintiff was previously notified by Grace M. Staple, RN, Head, Department of Nursing, that a Federal Traineeship was available [Ex. 30] after she initially made an inquiry about entering a baccalaureate program as proposed by the ANA (American Nurses' Association) to be a mandatory requirement for professional nurses. Plaintiff entered SJSU as a part-time student in the fall of 1963. In 1966, she became eligible for a grant under the Nurse Training Act of 1964 as a full-time student in the Department of Nursing. Jessie M. Scott, RN, Chief, Division of Nursing of the Department of Health, Education and Welfare (hereinafter HEW) reminded plaintiff, by letter [Ex. 31], of the purpose of this program as follows:

"There are a number of responsibilities that you assume when you accept a traineeship... You should always keep in mind, when planning your career in nursing, that the reason you received these funds was to increase your skills

and knowledge to help meet the critical need for prepared administrators, supervisors, teachers, and nurse specialists in order to improve all types of nursing services." (Underscore supplied.)

Plaintiff accepted the challenge of this noble trust by the federal program.

B. The Department of Nursing, SJSU, is Dependent upon the State of California for Funds from the State Treasury.

The Department of Nursing is situated on the campus of SJSU. Under Cal. Bus. & Prof. Code §100 (West 1990) of the General Provisions of the Business and Professions Code, the Department of Consumer Affairs is the regulatory agency. Under West's Ann. Gov. Code §11152, Chapter 2, State Departments, it states, that: "[T]he head of each department may adopt such rules and regulations as are necessary to govern the activities of the department..." Cal. Bus. & Prof. Code §107.5 adds: "If any board in the department uses an official seal pursuant to any provision of this code, the seal shall contain the words 'State of California' and 'Department of Consumer Affairs' in addition to the title of the board...". Under §1402 "... the term 'board' means the California Board of Registered Nursing." Under §2703 "All appointments [to the nine member board] shall be for a term of four years... No persons shall serve more than two consecutive terms." In Reed v. Molony, 101 P. 2d. 175, 38 C.A. 2d. 405 (1940), it was held that:

> Members of the State board of medical examiners were "public officers" and special officer of the board, employed

to investigate unlawful practice of medicine, was a "public peace officer." Likewise, under Cal. Bus. & Prof. Code §2715 the law states, that the Board of Registered Nursing "...shall prosecute all persons guilty of violating the provisions of this chapter." Under §2715 "The Board may adopt, amend, or repeal... such rules and regulations as may be reasonably necessary to carry into effect the provisions of this chapter." Like SJSU, the source of revenue for the BRN is from the State's Treasury. Under Cal. Bus. & Prof. Code, Art. 6, Revenue §2810 (West 1990), the law states, that:

> There is established in the State Treasury a Board of Registered Nursing Fund." §2812 [holds, that] within 10 days from the beginning of each month, the board shall report to the State Controller the amount and source of all collections... paid into the State Treasury, where they shall be placed to the credit of the Board of Registered Nursing Fund and to the Registered Nurse Education Fund..."

Under §2814, "All money in the Board of Registered Nursing Fund is hereby appropriated to carry out the provisions of this chapter and the promotion of nursing education in this State." In Article 6.5 Nursing Education Programs, §2816, "There is hereby established a special nursing manpower development program for the purpose of assisting persons in nursing occupations to either upgrade the level of their skill or licensure or both. This program may include, but is not limited to:

(b) Tutorial services, or (c) Counseling services.

Under §2815.1, "...the Board of Registered

Nursing shall increase the biennial fee paid upon filing an application for renewal of license by not less than five dollars ($5). The entire amount of this increase shall be credited to the Registered Nurse Education Fund."

Under §2818, Eligibility for assistance, the law states:

> No person shall be awarded financial or other assistance under this article unless he meets all of the following qualifications:
>
> (f) He is unable to qualify for or obtain scholarship... under any Federal traineeship program... (Underscore supplied.)

Therefore, even though all licensed nurses contribute to the State's Manpower Development Program by an increase in licensing fees, those who qualify for a traineeship grant under a federal program are denied ..."other assistance" such as counseling and tutorial services. Plaintiff therefore challenges the Constitutionality of the Board of Registered Nurses' laws with respect to the granting of State aid versus Federal aid in education under the Fourteenth Amendment with respect to §§2816, 2818.

C. The State of California, Through the Board of Registered Nursing, Subjected Licensed Nursing Students to Unequal or Unfair Treatment by the State.

Plaintiff alleges that the BRN did not prescribe, by regulation, the education program for licensed nurses to meet the objectives of Congress under the Nurse Training Act of 1964.

Specifically, the BRN's regulatory laws

disclaimed provisions for credit in the baccalaureate program at SJSU in which plaintiff and her licensed nurse colleagues participated under a Federal grant from HEW.

Under the Cal. Bus. & Prof. Code §2786.6 (West's 1990) it states in para (b) that:

> The board shall prescribe, by regulation, the education for which credit is to be given and the amount of credit which is to be given for each type of education. The word "credit"... is limited to credit for licensure only. The board is not authorized to prescribe the credit which an approved School of nursing shall give toward an academic certificate or degree.

During the period plaintiff was at SJSU, there was no regulatory activity in the baccalaureate program by the BRN through custom and usage for licensed nurses. Nevertheless, it was the intent of Congress that through the Nurse Training Act of 1964, that "schools must be encouraged to experiment with new and better ways of preparing students, and efforts to develop new programs and approaches to nursing education should be fostered." Senate Report (Labor and Public Welfare Committee) No. 1378 U.S.C.C.A.N. Vol. 110 (1964). Therefore, the BRN was legally required to develop a program to meet the objectives of the Federal Government. Instead, however, the DN at SJSU simply combined licensed and unlicensed nurses together in the same program which provided the unlicensed nurse dual preparation for both licensure and the baccalaureate degree under previous §1433 of the Cal. Bus. & Prof. Code (1964). Therefore, the credit by examination allowed licensed students was nothing more than a requirement for licensure of their own

students. However, the State had already licensed the older students, but the DN wanted that status altered by justifying that the credit by examination was required for the baccalaureate program. This program, in essence, wore two hats, depending upon which student, unlicensed or licensed, was present. In other words, the DN at SJSU usurped the power of the State by rescinding the credit previously given to licensed nurses by the State for comparable education, but which was now required that students take, by examination, for the baccalaureate licensure program. In Paul v. Davis, 96 S. Ct. 1155, 1165 (1976), the Supreme Court succinctly identified the interests protected by the Due Process Clause of the Fourteenth Amendment with respect to similar issues. The Court held, that:

> These interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by State law... In each of these cases, as a result of State action complained of, a right or status previously recognized by state law was distinctly altered or extinguished. It was this alteration, officially removing the recognition and protection previously afforded by the State, which we found sufficient to invoke the procedural guarantees contained in the Due Process Clause of the Fourteenth Amendment.

D. Nursing Faculty Agents, Under Color of State Law, Conspired with Discriminatory Intent, to Deprive Plaintiff of her Rights Secured by the Fourteenth Amendment.

Plaintiff alleges that she has been

deprived, under color of state law, of Federal rights secured by the Nurse Training act of 1964. Under Sec. 805(a) of Pub. L. 88-581, the Federal government appropriated "...grants to...collegiate...schools of nursing to assist them in meeting the additional costs... [and to]...improve, or expand their programs to teach and train nurses..." (64) U.S.C.C.A.N. (78 STAT) 908. Pub. L. No. 88-581 (Underscore supplied.) Plaintiff qualified and was accepted into the nursing program at SJSU. She received a B.S. Nursing Checklist of Courses. [Ex. 32]. Her counselor, Mary Lawrence, informed her that she would receive thirty-two (32) units of credit by challenge tests for her previous diploma nursing education. Plaintiff petitioned Mrs. H. Stevens, RN, Acting Dept. Head, for a deferral for health and academic reasons as stated in her letter dated, March 12, 1979, to Dr. John Gillbaugh, previous dean of the College. [Ex. 33]. Plaintiff alleges that Mrs. H. Stevens abused her authority by denying her request. Therefore, plaintiff alleges that she was deprived of a statutory right under the Nurse Training act of 1964, because her foreign-trained status, compared with her locally-trained nursing colleagues in the same program, called for substantive due process to alter this disparity if she was to be academically proficient to meet the objectives of the Federal Traineeship Program. In Tongol v. Ursery, 601 F. 2d. 1091, 1099 (1979), the Ninth Circuit's view is that "...a course of action is provided for deprivations of any Federal Statutory rights." (Citation omitted.) In Silva v. Vowell, 621 F. 2d. 640, 641 (5th Cir. 1980) this Court held, that:

> A state violates the equal protection clause when it irrationally treats

differently those similarly situated or when it irrationally treats similarly those people situated differently. U.S.C.A. Const. Amends. 5, 14.

Plaintiff submits the following facts as to reasons why she was situated differently from her nursing colleagues who were situated similarly:

(1) Plaintiff's diploma-nurse training was in India, therefore, she lacked information which was available to her licensed colleagues whose curriculum complied with state requirements for licensure.

(2) Plaintiff was not supplied with any texts and/or materials relevant to these courses by the Nursing Faculty at SJSU.

(3) Twelve (12) of the required units (10 A & B; 30 A & B) were indigenous to a western culture. Therefore, they had an adverse impact on plaintiff since the subjects were neither job-related, nor applicable to an eastern cultures' nursing history. [See B.S. Nursing Checklist, prev. Ex. 32].

(4) Twenty (20) of the remaining units required testing in the nursing of adults and children. A significant part of plaintiff's clinical experience in India focused on the theory and practice of tropical diseases in a socially, economically and educationally disadvantaged population.

Plaintiff was licensed in California without examination under Cal. Bus. & Prof. Code §2732.1 (b) (West's 1990) since she was granted reciprocity in licensure previously by the Registered Nurses' Association, Toronto, Canada. Plaintiff was a resident

of Canada for thirteen (13) years, but worked less than one year as a registered nurse there. Therefore, plaintiff had a substantive right to petition Mrs. H. Stevens, RN, Acting Dept. Head, for the time and opportunity to study for these tests since she was legally required to provide new methods for teaching as required by the Nurse Training act of 1964. "[A]ctions of State agencies administering federally-funded programs have been held to be actions under color of state law for the purpose of Section 1983." Tongol v. Ursery, Supra at 1097.

Plaintiff alleges that instead of providing her with text materials to study, Mrs. H. Stevens, RN, directed her to see an instructor: Mrs. Dufour, RN. Because plaintiff questioned the practice used by Mrs. Dufour, RN, Instructor, as to the DN's methods for "assisting" nurses to unfairly obtain the required knowledge to take the challenge tests [See prev. Ex. 33] reprisal actions were taken against her by Mrs. H. Stevens, RN, in violation of her rights to free speech. [Ex. 34, Decl. "C"]. Therefore, plaintiff filed a grievance with the Fairness Committee at SJSU because defendants conspired, with willful discriminatory intent, to remove her from the program. These reprisal actions by Mrs. H. Stevens, RN, were in the form of harassment, and intimidation to punish plaintiff by lowering her grades. [See prev. Ex. 34]. The intended action, by conspiracy, between Mrs. H. Stevens, RN, and Mrs. Dufour, RN, for the discriminatory purpose of removal from the program is reflected in Dr. J. Gillbaugh's letter dated August 15, 1966, in which he states: "Our office is always interested in the... individual student's successful completion

of a program. [Ex. 35]. (Underscore supplied.) In United States v. Classic, 313 U.S. 1031-32 (1941), the Supreme Court established the meaning of 'color of State law.' The Court defined the phrase to mean:

> [M]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law as action taken under color of state law...

Plaintiff filed a grievance with the Fairness Committee at SJSU after first notifying the Dean of the College. [See prev. Ex. 33]. She also notified and sought the advice of the Executive Secretary, Michael R. Buggy, RN, of the Consumer Affairs Department for the State of California. [See prev. Ex. 33]. Plaintiff, unknown to her at the time, was informed that she was the only nurse who had taken a grievance to the Fairness Committee and therefore, she was to be made an example of by the assignment of lower grades. Plaintiff had an obligation to comply with the terms of the Nurse Training act of 1964, to "maintain an academic standing that will qualify [her] for graduate study at a later date." [Ex. 36]. Plaintiff was receiving Federal funds under the Nurse Training act of 1964 [Ex. 37, Decl. "D"], but she was outraged by the abuses in the methods used to "assist" nurses, by cheating, to obtain their requirements for licensure or education. Under Section 842 of P.L. 88-581, the Federal government left the freedom to implement the program to the states by declaring "Noninterference with Administration of Institutions." Specifically, the law states that:

> Nothing contained in this title shall be construed...to exercise any direction, supervision or control...methods of

instruction, or administration of any institution.

Therefore, plaintiff alleges that there was no authority under both federal and state laws to enforce the objectives of the Nurse Training Act of 1964 during this period. Therefore, as plaintiff's records show that since the State took no action on her complaints, she exerted the State's authority with respect to disclosure of the "assistance by cheating" on state-wide licensing tests to students in the same baccalaureate program. The State of California did respond promptly to plaintiff's exercise of her free speech rights under the First Amendment to the Constitution with respect to cheating on state licensing examinations. [Ex. 38]. Plaintiff alleges that even though the letter grades were removed from her transcript records, with respect to this aspect of plaintiff's grievance as stated by Dr. William J. Dusel, Executive Vice President, in his letter dated July 3, 1967, she has been denied a liberty interest in employment ever since. [Ex. 38]. All parties to this conspiracy "black-balled" plaintiff by alleging that her problem was "inter-personal," on documents, to justify their overt acts to deny her employment and State's rights under the Fourteenth Amendment.

E. Plaintiff has a Constitutional Right in Relation to the State to be Free from Discrimination in Public Hiring.

Plaintiff alleges that because she exercised her right to free speech under the First Amendment as a student recipient of a Federal grant in the DN, SJSU, she was called a "troublemaker" in the VA and denied a constitutional right to be free from

discrimination in public hiring by state action. In Arnold v. Intern. Business Machines, 637 F. 2d. 1350, 1355 (9th Cir. 1981), the Ninth Circuit Court deliberated causation and liability of 42 U.S.C.§§1983 and 1985 by holding that:

> The requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury. (Citation omitted.)

Plaintiff accepted employment in Kaiser Hospital, San Francisco, in 1967 after she graduated from SJSU. In the fall of 1967, she became aware that agents of the DN, SJSU, and Mrs. Patricia Leonard, RN, Director of Nursing, with common understanding and willful intent, engaged in discriminatory conduct to deprive plaintiff of her constitutionally protected rights. Plaintiff's declaration with attachments [Ex. 40, Decl. "E"] attests to the veracity of these events because they have been documented through other internal administrative processes. In Adams v. Southern California First National Bank, F. 2d. 324, 329 (9th Cir. 1973), the Court quoted the Supreme Court in Moose Lodge No. 107 v. Irris, 92 S. Ct. 1965, 1971, saying that:

> Our holdings indicate that where the impetus for the discrimination is private, the State must have significantly involved itself...to fall within the ambit of the constitutional prohibition.

Plaintiff next applied for, and was accepted for employment as a registered nurse in the VA Hospital, Palo Alto. On

April 9, 1968, she was notified by Mr. Carl P. Hollenhorst, Chief Personnel Division, that her date of entry into Federal Service was April 15, 1968. [Ex. 41]. After her 90-day temporary appointment had expired, she was fired from Federal Service. The reason given plaintiff by Gladys Chennette, RN, Head Nurse, Ward 7D1, was that her supervisor, Doris von Morpurgo, RN, called plaintiff a "troublemaker" because of, as she learned later, two undisclosed references. This action was prompted because she both exercised her right to free speech and she also acted as an advocate for a paraplegic veteran who was being abused by some of her nursing colleagues because he had a dysfunc-tional physiological problem of bed-wetting. Plaintiff's declaration attests to the circumstances surrounding this unjustified personnel action. [Ex. 42, Decl. "F"]. In Plaintiff's letter dated 7§2§1968, to the Asst. Chief Nurse Mrs. A. June Miller, RN, she requested that:

> May I please be allowed to meet with either you or the evaluating committee to discuss this incident, so that I can be exonerated from this stigma and given a chance to work constructively with my colleagues towards patient care. [Ex. 43].

Students of San Jose State University participated in their clinical experience at the VA Hospital, Palo Alto. [Ex. 44]. Plaintiff was granted another 90-day probationary extension of excepted appointment which temporarily aborted any further pursuit of this issue. [Ex. 45]. In plaintiff's Motion No. 3 for equitable relief under 42 U.S.C.A. §1985(2)(3), she presents facts to support her entitlement to equitable relief because the issue was not laid to rest. Instead, defendant federal

agents engaged in a civil conspiracy, by a class-based invidious discriminatory animus using overt acts to effect her discharge from Federal service and to obstruct justice in the Federal courts for the purpose of depriving her of equal protection of the laws.

SUMMARY

Plaintiff has presented facts in her Motion No. 2 in support of her allegations of state action, under the color of state law, for violations of her civil rights under 42 U.S.C.A. §1943(3), 1891, 1981 and 1983. The results of these violations was that she was dis-charged from Federal Service through concerted action of federal, private and state agents under color of state law. She has presented facts showing that this egregious conduct has resulted in severe and unnecessary damage to her professional career, and she can show substantial emotional and economic loss. The Court has no jurisdiction to maintain the judgment of this alleged disciplinary board since the subject-matter on which the judgment is based is void. Therefore, the Court's judgment is also void. Defendants' VA acted in bad faith because plaintiff was participating in "...the Federal Government's investment in the future good health of the nation" by providing education for nurses in VAPA through the various disciplines. [Ex. 46, Decl. "G" with attachments]. Plaintiff, however, was denied this right by both State and Federal agents' education programs. In the field of health care for veterans, these are unconscionable acts and contrary to public policy and the intent of Congress.

PRAYER FOR RELIEF

Plaintiff respectfully petitions the Court to:

1. Declare the Judgment in No. C 83-20374 WAI, and axiomatically, Judgment in C-84-1519 JPV null and void.
2. Grant equitable relief as stated in her Motion No. 3 under the Administrative Procedure Act §704 through the Back Pay Act of 1966, 5 U.S.C.A. §5596.
3. Declare §§2816, 2818 of the Cal. Bus. & Prof. Code unconstitutional because these state laws discriminate against student nurses receiving federal funds in contrast to student nurses receiving state funds in matters relating to all forms of assistance in the educational process for nurses who are upgrading their skills and knowledge. Plaintiff alleges that the State of California, through it officers on the Board of Registered Nurses, has promulgated laws that violate the equal protection, privileges and immunities under the Fourteenth Amendment to the Constitution.

Plaintiff reserves her rights to submit a Cost Bill for attorney fees and other allowable costs after Judgment is issued.

Respectfully submitted,

Date:_____, 1992

_____

Lynette Rogers, Plaintiff, *pro se*
624 Cornelia Court
Mountain View, CA 94040

FILED APR 19 1984

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
VETERANS ADMINISTRATION, et al.,
Defendants.

No. C 83-20374 WAI
JUDGMENT

In accordance with the accompanying Order, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above referenced case be, and the same hereby is, DISMISSED, each party to bear his/her own costs.

DATED: APR 19 1984

/s/ Wm A. Ingram
WILLIAM A. INGRAM
United States District Judge

Addendum Z, attach. 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED AUG 28 84

LYNETTE ROGERS,
Plaintiff,
vs.
UNITED STATES DEPARTMENT OF LABOR, SECRETARY OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, RALPH M. HARTMAN, Director, OFFICE OF WORKERS' COMPENSATION PROGRAMS, GERALD T. CULLEN, Deputy Commissioner, OFFICE OF WORKERS COMPENSATION PROGRAMS, EDWARD OROZCO and LAWRENCE SCHELL, CLAIM EXAMINERS, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Defendants.

NO. C-83-0719 JPV
ORDER DENYING PLAINTIFF'S MOTION FOR A CHANGE OF VENUE AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff moves for a change of venue. defendant opposes this motion, and moves this Court to dismiss this case, or, in the alternative, for summary judgment. These motions came before this Court on January 12, 1984, the Honorable John P. Vukasin, Jr. presiding. For the reasons given below, this Court denies plaintiff's motion for a change of venue, and grants summary judgment in favor of the defendant and against the plaintiff.

Plaintiff commenced this civil action under the Privacy Act of 1974, 5 U.S.C. §552a, to compel the U.S. Department of Labor (DOL) to amend certain records it compiled in the course of processing plaintiff's disability claim under the Federal Employees' Compensation Act (FECA), 5 U.S.C. §8101 et seq. Plaintiff contends it was the inaccuracy of these records which caused her to be denied disability benefits

to which she was otherwise entitled. Plaintiff also seeks statutory damages from DOL on the grounds that the agency maintained "factually erroneous information" acout her to her detriment. Cf., 5 U.S.C. §552a(g)(4).

PROCEDURAL HISTORY

Plaintiff is a former employee of the Veterans Administration (VA). She was initially hired by that agency in 1968 as a staff nurse and over a period of time was promoted to the position of Head Nurse for the Medical and Dermatology Ward. During 1971-1972, however, plaintiff encountered numerous on-the-job difficulties which resulted in her reassignment to her former position as a staff nurse in 1972, a clerical position in 1973, and ultimately she was terminated in 1975. Plaintiff filed her first FECA claim in March, 1973, after she had been reassigned to the position of staff nurse, and another in 1974, after she had been assigned to clerical duties at which time she took extended sick leave. In her applications for disability benefits, plaintiff claimed she suffered from continual stress and hypertension due to actions taken against her by supervisors at the Veterans Administration, actions she claimed to be in the nature of continual harassment, intimidation and coercion.

The Office of Workers' Compensation Programs processed plaintiff's claims in accordance with DOL regulations set forth at 20 C.F.R. Part 10. In the course of processing her claims, evidence was obtained from the claimant and relevant personnel at the Veterans Administration. In addition, the claimant was examined by a specialist in internal medicine who furnished his findings for OWCP's consideration. Cf., 20 C.F.R. §10.130. On October 31, 1974 and June 2, 1975, the OWCP Director rejected Ms. Rogers'

claims for disability compensation ruling that she had failed to establish that her disorders were employment related. Plaintiff subsequently requested a hearing, as proviced in 5 U.S.C. §8124(b) and 20 C.F.R. §10.131, to present additional evidence in further support of her claims. A hearing was held before Hearing Representative Robert P. Duggan on March 18, 1976. Based upon the evidence submitted for his consideration, the Hearing Representative, on October 20, 1978, affirmed the June 2, 1975 Order finding that the claimant's disorders were of a pre-existing nature and not attributable to her employment.

PLAINTIFF'S PRIVACY ACT REQUEST

Plaintiff now seeks, under the authority of section (d)(2) of the Privacy Act, 5 U.s.C. §552a(d)(2), amendments to or the expungement of certain records generated or compiled by OWCP in the course of processing her disability claims. On May 25, 1983, plaintiff specifically requested: (a) the OWCP decisions of October 31, 1974 and June 2, 1975 be amended to reflect that the actions taken against her by her supervisors at the VA were not standard disciplinary actions; (b) the amendment of the physician's diagnosis to the extent she disagreed with it; (c) expungement of a narrative relating to plaintiff's performance furnished by her former supervisors at the VA; and (d) recision of Hearing Representative Duggan's decision to the extent it relies upon the foregoing narrative.

The Privacy Act allows for the amendment of factual or historical errors. It is not, however, a vehicle for amending the judgments of Federal officials or the judgments of others reflected in records maintained by Federal agencies. Blevins v.

Plummer, 613 F.2d 767, 768 (9th Cir. 1980). Moreover, it may not be employed to obtain review of Federal agency decisions. Id.

The amendments sought by plaintiff in the documents described in (a) and (d) will not be allowed. These documents reflect agency judgments, not factual or historical errors, and thus are not subject to amendment under the privacy act. Blevins, 613 F.2d at 768. Further, plaintiff's proposed amendment and expungment of the documents described in (b) and (c) will also be denied. Both the physician's report reflecting the doctor's diagnosis of plaintiff's condition (document (b)), and the report of the plaintiff's supervisor (document (c)), are among the most relevant records evaluated by the Office of Workers' Compensation Programs in making an award determination, and normally will be an issue in quasi-judicial proceedings. See 20 C.F.R. §§10.130-10.150, 501.1-501.13.

The Office of Management and Budget, that agency charge by Congress with responsibility for implementing the Privacy Act, specifically addressed considerations of this nature in the guidelines it promulgated pursuant to section 6 of the Act, 5 U.S.C. §552a note, indicating that:

> "[T]hese provisions for amending records are not intended to permit the alteration of evidence presented in the course of judicial, quasi-judicial or quasi-legislative proceedings. any changes in such records should be made only through the established procedures consistent with the adversary process. These provisions are not designed to permit collateral attack upon that which has already been the subject of a judicial or quasi-

judicial action. For example, these provisions are not designed to permit an individual to challenge a conviction for a criminal offense received in another forum or to reopen the assessment of a tax liability, but the individual would be able to challenge the fact that conviction or liability has been inaccurately recorded in his records."

40 Fed. Reg. 28958 (July 9, 1975); Turner v. Department of Army 447 F. Supp. 1207, 1212, n 17 (D.D.C. 1978).[1/] This Court agrees withthe Office of Management and Budget's position, and finds that this evidence is not subject to collateral attack under the Privacy Act.

Accordingly, this Court finds that plaintiff is not entitled to amend her compensation claim file in the manner she has requested. Plaintiff's second count for damages based upon "factually erroneous information" is effectively mooted. Also moot is plaintiff's motion for a change of venue.

In view of the foregoing,

IT IS HEREBY ORDERED that the motion for summary judgment now before this Court is granted in favor of the defendant and against the plaintiff.

Dated: Aug 28 1984

/s/ J P Vukasin Jr.
J. P. VUKASIN, JR., JUDGE
UNITED STATES DISTRICT COURT

1/ Agency regulations promulgated pursuant to a specific congressional authority are presumptively valid and are entitled to great deference. Griggs v. Duke Power Co., 401 U.S. 424, 433-434; 91 S.Ct. 849, 854-855; 28 L. Ed. 2d 158 765 (1971).

FILED JUL 10 1985

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,

v.

VETERANS ADMINISTRATION, et al.,
Defendants.

No. C-84-1519 JPV

O R D E R

This matter came on for hearing before this Court on June 20, 1985. Briefs having been filed and the parties having been heard at the hearing, it is the Order of this Court that:

1. Plaintiff's Motion under Fed.R. Civ.P. 60(b) is denied on the grounds that she has failed to meet the requirements of Rule 60(b) for reopening this case. It is denied on the further ground that none of the arguments plaintiff makes has merit; and

2. Defendants' Motion under Fed.R.Civ.P. 11 is granted on the ground that plaintiff's attorney has signed a motion without reasonable belief that is was well founded in fact or in law, and is thus subject to sanctions, including attorneys fees of $3,810.

DATED: JUL 10 1985

J.P. Vukasin Jr.

JOHN P. VUKASIN, JR.
United States District Judge

ENTERED IN CIVIL DOCKET 7/15 1985

Addendum Z, attach. 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE J. P. VUKASIN, JR,
JUDGE

LYNETTE ROGERS,
PLAINTIFF,
VS.
VETERANS ADMINISTRATION,
DEFENDANT

C-84-1519 JPV

SAN FRANCISCO, CALIFORNIA
THURSDAY, JUNE 20, 1985

APPEARANCES:
FOR PLAINTIFF: ALBIN E. DANELL, ESQ.
A PROFESSIONAL
CORPORATION
111 W. ST. JOHN STREET,
SUITE 650
SAN JOSE, CA 95113

FOR DEFENDANT: WILLIAM MC GIVERN,
ASSISTANT UNITED STATES
ATTORNEY
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102

REPORTED BY: VIVIAN PELLA BALBONI, CSR

THURSDAY, JUNE 20, 1985

THE CLERK: LYNETTE ROGERS VS. THE VETERANS ADMINISTRATION. C-84-1519.

YOUR APPEARANCES COUNSEL, PLEASE.

MR. DANELL: YES. ALBIN DANELL FOR THE PLAINTIFF, GOOD MORNING, YOUR HONOR.

THE COURT: GOOD MORNING.

MR. MC GIVERN: WILLIAM MC GIVERN, ASSISTANT UNITED STATES ATTORNEY FOR THE DEFENDANT.

THE COURT: GOOD MORNING.

MR. DANELL: YOUR HONOR, WE DIDN'T HAVE AN OPPORTUNITY TO RESPOND TO THE BRIEF.

WE WERE DENIED A CONTINUANCE. I DID HAVE SOME PAPERS THAT OUR CLIENT HAD SENT UP TO THE COURT, DELIVERED BY CARRIER YESTERDAY FOR THE COURT TO CONSIDER. WE WANTED TO PUT THEM IN SOME FORM TO SHOW WHERE MRS. ROGERS WAS-

WE CANNOT APPEAL THE ORIGINAL DECISION OF JUDGE POOLE. WE FEEL THAT IF IT WAS KNOWN WHAT ADMINISTRATIVE PROCEDURE SHOULD HAVE BEEN IMPLEMENTED MAYBE A DIFFERENT RESULT WOULD HAVE OCCURRED. WE ALSO FEEL IF THAT INFORMATION HAD BEEN BEFORE JUDGE INGRAM WE WOULD HAVE GOTTEN A DIFFERENT RESULT.

WE ADVISED MRS. ROGERS THAT WE CANNOT MAKE A MOTION FOR A NEW TRIAL IF JUDGE INGRAM'S MOTION WAS DENIED. THAT'S ALL WE COULD DO WITH THE FACTS THAT WERE BEFORE US. WE DIDN'T APPEAL.

SHE WENT OUT AND DID DO A LOT OF WORK AND CAME UP WITH SOME INFORMATION FOR US. NOW, THE PROFESSIONAL RESPONSIBILITY, WHAT CAN WE POSSIBLY DO FOR MRS. ROGERS? DO WE HAVE ANY BASIS FOR MAKING A CLAIM ON THE NEWLY DISCOVERED EVIDENCE WHICH CASE LAW SEEMS TO SUPPORT TO BE LITERALLY CONSTRUED? SO WE FILED THIS MOTION, YOUR HONOR. I THINK IT'S MADE IN GOOD FAITH. I KNOW MRS. ROGERS CERTAINLY BELIEVES SHE'S BEEN AVAILABLE WHICH SHE DOESN'T HAVE ANY REMEDY FOR NOT HAVING EMPLOYMENT FOR TEN YEARS.

WE DID INVESTIGATE THIS MATTER THOROUGHLY, YOUR HONOR. WE CHARGED HER I THINK $890.00 TO BRING THIS MATTER. I SEE THE GOVERNMENT WANTS SANCTIONS AGAINST ME FOR PROTECTING MY CLIENT'S INTEREST AND RIGHTS. I THINK SHE SHOULD SIMPLY HAVE THE RIGHT TO A HEARING, YOUR HONOR, BEFORE A DULY CONSTITUTED BOARD WITH A CHAIRPERSON BEING A PHYSICIAN AS THE REGULATIONS REQUIRE. AND THAT WOULD SIMPLY SOLVE THIS ENTIRE PROBLEM. MAYBE THE RESULT WOULD BE THE SAME, I DON'T KNOW YOUR HONOR. AT LEAST

IT WOULD SEEM TO END ALL OF THESE -- HER FRUSTRATIONS AND OTHER FRUSTRATIONS FOR TRYING TO FIND SOME LEGAL BASIS TO SUPPORT HER CLAIM.

WE DID THIS, YOUR HONOR, AND IT TOOK ALMOST THE ENTIRE YEAR TO DO IT. WE DIDN'T FILE ANY FRIVOLOUS MOTION FOR A NEW TRIAL OR NOTICE OF APPEAL. WE MERELY CAME HERE TO SEEK RELIEF MERELY UPON INFORMATION OBTAINED AFTER JUDGE INGRAM'S RULING AND I THINK THAT'S SET FORTH IN ALL THE PAPERS. I DON'T KNOW WHAT MORE WE COULD HAVE DONE IN THIS CASE. MAYBE IT'S STILL INSUFFICIENT AS FAR AS THIS COURT IS CONCERNED.

I THINK THE MOTION SHOULD BE GRANTED AND WE SHOULD BE GIVEN A NEW HEARING. OTHERWISE, I THINK WE'VE FAIRLY WELL BRIEFED IT, YOUR HONOR. ALL MRS. ROGERS WOULD LIKE TO HAVE IS A LOT MORE THINGS. AS YOU CAN SEE FROM THE PAPERS WE SENT YOU YESTERDAY I DIDN'T FEEL JUSTIFIED IN DOING IT THEN. I DO THINK I FEEL JUSTIFIED DOING IT NOW. THE ISSUES ARE NARROW ONES. IF THE COURT WAS GIVEN INFORMATION THAT IMPROPER REGULATIONS WERE IN EFFECT THAT SHOULD BE CORRECTED AND ALLOW HER TO HAVE HER PROPER DAY IN COURT.

MR. MC GIVERN: WILLIAM MC GIVERN FOR THE DEFENDANT, YOUR HONOR.

FIRST OF ALL, WHEN MR. DANELL MENTIONED PROVIDING TO THE COURT SOME ADDITIONAL PAPERS I HAVE NO OBJECTION TO THE COURT FILING AND CONSIDERING THOSE PAPERS. I WOULD JUST LIKE TO MAKE A BRIEF COMMENT ABOUT THEM.

MR. DANELL'S BRIEFS ADD NOTHING NEW. THEY DON'T POINT TO ANY NEWLY DISCOVERED EVIDENCE. WE POINTED OUT IN OUR BRIEF THAT THE SO-CALLED NEWLY DISCOVERED EVIDENCE UNDER 60(B) CONSISTED OF NOTHING MORE THAN EXHAUSTIVE RESEARCH INTO SOME LEGISLATIVE HISTORY WHICH WAS A MATTER OF PUBLIC RECORD 9, 10 YEARS AGO.

THE CASE WAS LOST IN 1977. IT WAS

LOST AGAIN IN 1984 AND IT'S BEEN REINSTATED TWICE BASED ON AN ARGUMENT WHICH HAPPENS TO BE WRONG ON ITS MERITS THAT THE REGULATION WAS NOT PROPERLY CHANGED AND IN ANY CASE WAS APPEALED IN EITHER 1977 OR 1984.

AS A RESULT OF THEIR LACK OF APPEAL AND LACK OF A SHOWING OF NEWLY DISCOVERED EVIDENCE THE RULE 60(B) MOTION SHOULD BE DENIED. THIS IS ALL IN OUR PAPERS WHICH WE FILED IN THIS MOTION AND I POINTED THE COURT TO THE MOTION THAT WE FILED A YEAR AGO IN THIS CASE.

WITH REGARD TO THE MOTION FOR SANCTIONS, WE FELT THAT THIS SECOND FILING IF EVIDENCE, A FILING UNDER RULE 11 WHICH COULD NOT REASONABLY BE BELIEVED TO HAVE MERIT. IN FACT, THE LAW PROPOSED BY OPPOSING COUNSEL WE FELT IT WAS OUR OBLIGATION TO POINT THIS OUT TO THE COURT. NOW, THAT'S BEEN POINTED TO THE COURT. IT'S NOT MY POSITION TO ADVOCATE AGAINST OPPOSING COUNSEL. AND IF YOUR HONOR FEELS THAT SUCH SANCTIONS ARE WARRANTED SO BE IT. IF NOT SO BE IT.

ONCE WE'VE POINTED OUT WHAT WE BELIEVE TO BE A VIOLATION THAT'S A MATTER BETWEEN THE COURT AND OPPOSING COUNSEL. I HAVE NOTHING ELSE TO SAY OTHER THAN WE RELY ON THE PAPERS THAT WE FILED.

MR. DANELL: YOUR HONOR? I FELT WE ACTED IN GOOD FAITH TO TRY TO PROTECT THE RIGHTS OF MY CLIENT. IT'S A DIFFICULT SITUATION TO BE PUT IN, A POSITION OF BEING ACCUSED OF ABANDONING A CLIENT'S POSITION UNDER THE RULES OF PROFESSIONAL CONDUCT AND ETHICS AND BEING CERTAIN OF NOT PURSUING THE CLAIM WHEN THE CLIENT GOES OUT AND GETS SUFFICIENT INFORMATION.

WE SEE IT'S DIFFERENT. WE TRY TO KEEP OUR OWN EXPENSES DOWN DOING IT. WE FELT IT WAS WORTH HAVING ANOTHER HEARING AFTER ALL THIS TIME. WE FELT IF IT WAS HANDLED BACK IN 1977 -- I WASN'T INVOLVED IN THAT CASE, I

GOT IN THIS CASE THREE YEARS AGO -- PERHAPS A DIFFERENT RESULT WOULD HAVE COME. I FELT WE HAD AN OBLIGATION TO TRY TO PROTECT HER INTERESTS AS BEST WE CAN. IF THE COURT FEELS THERE IS NO MERIT ALL I CAN DO IS PRESENT THE ARGUMENT, YOUR HONOR.

THE COURT: THANK YOU. THE MATTER IS SUBMITTED?

MR. MC GIVERN: WE SUBMIT THE MATTER, YOUR HONOR.

MR. DANELL: YES, SIR.

THE COURT: I'M GOING TO RULE. IT NOW STANDS SUBMITTED.

THIS PLAINTIFF FILED HER ORIGINAL ACTION IN 1973 AND JUDGMENT IN FAVOR OF THE DEFENDANT WAS RENDERED IN FEBRUARY OF 1977. NO APPEAL WAS TAKEN FROM THAT JUDGMENT AND ALMOST SEVEN YEARS LATER THE COMPLAINT IN THIS ACTION WAS FILED IN NOVEMBER OF 1983. JUDGE INGRAM GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND ORDERED THE ACTION DISMISSED.

THE MATTER WAS TRANSFERRED TO THIS COURT TOGETHER WITH A NUMBER OF OTHER CASES WHEN IT WAS BROUGHT TO THE COURT'S ATTENTION THAT THIS WAS RELATED TO A MATTER ALREADY PENDING IN THIS COURT.

PLAINTIFF'S MOTION FOR RELIEF IS ENTIRELY BASED ON THIS PREMISE THAT THE PLAINTIFF HAS NEWLY DISCOVERED EVIDENCE OF DEFENDANT'S FRAUD. NEW EVIDENCE ITSELF IS ASSURED AS ONE BASIS FOR RELIEF UNDER FEDERAL RULE OF CIVIL PROCEDURE SECTION 60(B)(2) AND THE FRAUD UPON BOTH PLAINTIFF AND THE COURT WHICH THE EVIDENCE ALLEGEDLY REVOLVES IS ALLEGED AS A SECOND BASIS UNDER RULE 60(B)(3).

THERE ARE TWO MOTIONS BEFORE THE COURT. MOTION TO VACATE AND SET ASIDE THE ORDER ISSUED BY JUDGE INGRAM AND TO GRANT PLAINTIFF'S RELIEF REQUESTED IN THE ORIGINAL ACTION AND SECONDLY DEFENDANT'S MOTION FOR SANCTIONS UNDER RULE 11.

THE PLAINTIFF HAS FAILED TO MAKE A

SHOWING OF ANY NEWLY DISCOVERED EVIDENCE WITHIN THE MEANING OF THE RULE 60(B)(2). ALL OF THE EVIDENCE WHICH THE PLAINTIFF CONTENDS IS NEWLY DISCOVERED IS NOT NEW EVIDENCE BECAUSE IT WAS EITHER IN PLAINTIFF'S POSSESSION OR AVAILABLE FOR RESEARCH AT THE TIME OF PLAINTIFF'S 1983 COMPLAINT.

A JUDGMENT SHOULD NOT BE REOPENED IF THE EVIDENCE IS MERELY CUMULATIVE AND IT WOULD NOT HAVE CHANGED THE RESULT.

PLAINTIFF'S ALTERNATIVE BASIS FOR RELIEF IS PLEAD UNDER RULE 60(B)(3) ON THE GROUNDS THAT DEFENDANTS ORDER WAS OBTAINED IN JUDGE INGRAM'S COURT BY FRAUD AND MISREPRESENTATION.

THE MOTION TO VACATE A JUDGMENT WILL BE DENIED IF IT IS MERELY AN ATTEMPT TO RELITIGATE THE CASE OR IF THE COURT DETERMINES THAT FRAUD HAS NOT BEEN ESTABLISHED. IT ESTABLISHED THE PLAINTIFF WAS MERELY RELITIGATING THE CLAIM THAT SHE PRESENTED EARLIER.

EVEN IF THIS COURT WERE TO VACATE JUDGE INGRAM'S ORDER WHICH DOES NOT APPEAR THAT PLAINTIFF IS ENTITLED TO THE RELIEF PRAYED FOR IN HER INDEPENDENT ACTION BECAUSE HER ADDITIONAL EVIDENCE AND ARGUMENTS DO NOT REVEAL A FRAUD TO THE COURT.

AND FINALLY, PLAINTIFF HAS NOT DEMONSTRATED FRAUD ON THE COURT BECAUSE THE FACTS ALLEGED DON'T RAISE AN ISSUE OF EXTRINSIC FRAUD.

NOW, ACCORDINGLY, PLAINTIFF'S MOTIONS ARE DENIED.

THE ONLY REMAINING ISSUE IS THE DEFENDANT'S MOTION FOR SANCTIONS PURSUANT TO RULE 11. THIS COURT DOES NOT TAKE SANCTIONS AUTHORIZED BY RULE 11 LIGHTLY AND HAS NEVER BEFORE IMPOSED SANCTIONS. IN THIS CASE THE DEFENDANTS MOVE THE COURT FOR AN AWARD OF RULE 11 SANCTIONS ON THE GROUNDS THAT BOTH PLAINTIFF'S UNDERLYING ACTION AND THE PRESENT MOTION ARE FRIVOLOUS AND A WASTE OF

THE COURTS AND COUNSEL'S TIME.

RULE 11 PROVIDES THAT THE SIGNATURE OF AN ATTORNEY CONSTITUTES A CERTIFICATE BY HIM THAT HE HAS READ THE MOTION, THAT TO THE BEST OF HIS KNOWLEDGE, INFORMATION AND BELIEF AFTER REASONABLE INQUIRY IT IS WELL-FOUNDED AND IS WARRANTED BY EXISTING LAW AND THAT IT IS NOT IMPOSED FOR ANY IMPROPER PURPOSE.

IT IS THE DEFENDANT'S POSITION THAT PLAINTIFF'S COUNSEL HAS VIOLATED RULE 11 BY CERTIFYING TO THIS COURT THAT THE MOTION IS WELL-FOUNDED IN FACT AND WARRANTED BY EXISTING LAW.

THE COURSE OF THIS LITIGATION BEARS OUT DEFENDANT'S POSITION.

DURING THE 1983 LITIGATION IT WAS POINTED OUT TO MR. DANELL BY DEFENDANTS THAT THE COMPLAINT ALLEGING FRAUD ON THE COURT WAS IN ERROR BUT HE NONETHELESS CONTINUED TO LITIGATE.

JUDGE INGRAM FOUND AGAINST THE PLAINTIFF BECAUSE HER ARGUMENTS WERE MERITLESS. MR. DANELL PERSISTS IN HIS COURSE OF CONDUCT BY FILING THIS MOTION AND ARGUING THE SAME POINT WHICH HE PREVIOUSLY LOST AND BY ALLEGING KNEW EVIDENCE WHICH, IN FACT IS PREVAILABLE IF COUNSELED EXERCISED DUE DILIGENCE.

MR. DANELL ACCUSES THE VETERAN'S ADMINISTRATION OFFICIALS AND DEFENDANT'S COUNSEL ON FRAUD ON THE COURT FOR MAKING AN ARGUMENT WHICH JUDGE INGRAM CORRECTLY FOUND TO BE IN FACT TRUE. DEFENDANTS HAVE MOVED PURSUANT TO RULE 11 FOR SANCTIONS. THEY SEEK SANCTIONS FOR ATTORNEYS FEES REPRESENTING 25.4 HOURS OF WORK AT $150 PER HOUR FOR A TOTAL OF $3,810.00.

DEFENDANT'S MOTION FOR SANCTIONS PURSUANT TO RULE 11 IS GRANTED. THE GOVERNMENT WILL PREPARE THE ORDER.

MR. MC GIVERN: THANK YOU, YOUR HONOR. I PROVIDED A PROPOSED ORDER ON BOTH THE --

THE COURT: I'LL LOOK AT IT.

MR. MC GIVERN: -- ON BOTH SIDES. I BELIEVE YOU HAVE IT BUT IF YOU DON'T I CAN SEND ANOTHER ONE UP.

THE COURT: I'M SURE WE HAVE IT. IF WE NEED A COPY I'LL CALL YOU.

MR. MC GIVERN: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

(PROCEEDINGS CONCLUDED)

CERTIFICATE OF REPORTER

I, VIVIAN PELLA BALBONI, OFFICIAL REPORTER FOR THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1 THROUGH 10, INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

/s/ VIVIAN PELLA BALBONI, CSR

FILED NOV 16 1990
IN THE UNITED STATES CLAIMS COURT

LYNETTE ROGERS
v.
THE UNITED STATES

No. 697-87 C
JUDGMENT

Pursuant to the order of November 16, 1990,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's motion to vacate the judgment of the Claims Court under RUSCC 60(b), filed October 23, 1989, is denied.

Frank T. Peartree
Clerk of Court

November 16, 1990

By: Deputy Clerk

Note: As to appeal, 60 days from this date, see RUSCC 72. Filing fee is $105.00

Received Jul 20, 1973 (stamp at top of page)
(bottom stamp reads: Received Jul 16, 1973)
UNITED STATES GOVERNMENT
MEMORANDUM

Date: July 15, 1973

TO : The Chief Medical Director
THRU : A. M. Gottlieb, MD, Hosp. Director
FROM : Mrs. L. Rogers, RN, ICS
SUBJECT: Admonishment

1. I believe this admonishment to be both unwarranted and unjustified since the basic policies and requirements of the administrative agency for the DM&S as stated in MP-5, Part II, Chapter 8, Section A, titled, Disciplinary Actions, have been violated at this agency as follows:

a) Under Section A, para. 3, Policy, it states that:

"Supervisors at all levels will be responsible for maintaining discipline by providing the leadership and example that ordinarily will result in obtaining from employees willing and full compliance with instructions, established policies, procedures, rules and regulations."

However, physicians' orders are violated by Supervisors (i.e., Head Nurses), and they also delegate to professional nurses orders that are not within established policies, procedures, rules and regulations. Furthermore, professional nurses also make arbitrary decisions regarding orders; therefore, it is apparent that the principle of like penalties for like offenses is waived in favor of arbitrary decisions. Likewise, the physician for Wards 2B2 and 2C2 has, and continues to give orders that are procedurally incorrect according to the Professional Services Memorandum No. 70-1, for physicians.

b) Under Section A, para. 4.e,

Authorized Disciplinary Actions, it states:

"Before admonishment or reprimand is given, the employee will be notified, and given an opportun-ity to present his views."

However, I had no prior knowledge of this disciplinary action until I was requested to sign the admonishment by the Chief Nurse, Miss Helen Hennessy, RN, at 8:25 A.M. on July 2, 1973. Furthermore, I was denied the opportunity to present my views also. Specifically, I was requested by Mrs. M. Elliott, RN, Head Nurse, Ward 2C2, to complete an Incident Involving a Beneficiary on a VA form 10-2633. This, after I voluntarily informed the Head Nurse of this change (in a personal note to her) in the best interests of this patient's welfare, and regardless of the fact that Dr. Burian ordered a "No Code 66" for this patient. This action was subsequently used as incriminating evidence against me in the form of an admonishment despite the Head Nurse's knowledge of how the orders were effected.

c) Under Section A, para. 5, Initiating Disciplinary Action, it states that:

"Disciplinary action will not be taken in cases of error of professional judgment when negligence is not involved nor in cases of differences of professional opinion."

In my letter to the Chief, Nursing Service, and as stated on VA Form 10-2633, I narrated the incident as follows:

"Mrs. (blank)(blank) 76, DX, Aortic Stenosis and congested heart failure, was transferred back to Ward 2C2 from Bldg. 1. On 6/9/1973, the patient showed increasing signs of listlessness and weakness,

therefore, I checked both the Doctor's Order Sheet and laboratory results for K^+ levels before I game her p.m. dose of KCL. The transferring physician's handwritten order on the Doctor's Order Sheet stated: "↓ KCL 10% 20 Meg. p.o. b.i.d. without juice. Transfer to 2C2 in A.M." The Doctor's transfer note on the progress sheet said: "KCL 10% 20 meg. (1 tbsp) b.i.d. without juice (1 tbsp. = 15 ml. - approx.) and, "KCL - check K^+ until stable." There were no labratory reports for K^+levels other than those done in Bldg. 1. These showed fluctuations in the patient's K^+ levels. The physician's typewritten order on 2C2 for this medication was in quantity instead of dosage form as "KCL 10% 20 ml. b.i.d." Therefore, the patient's KCL was ↑ to 53.6 meg. instead of ↓ to 40 meg./day as recommended by the transferring physician. I discussed the problem and reviewed the patient's chart with Mrs. Wiley, RN, p.m. Supervisor. Since the problem may have been a typographical error, I left a note to the Head Nurse, Ward 2C2, stating that I changed the quantity to dosage form on the Doctor's Order Sheet, CMT, and medicine ticket and requested uniformity for the order. Since the responsibility for reviewing patients' orders is left to professional nurses, and only one signature is placed by the physician at the end of all typewritten orders instead of each entry, patients' records show that corrections on typewritten orders are made by professional nurses and with knowledge of some head nurses even after the physician has signed the orders; since professional nurses are responsible for checking the accuracy of each order in the best interests of patient care." I administered the p.m. dose of KCL 10% 20 meq. p.o. without juice (approx. 15 ml.) as recommended by the transferring physician a

day prior to her transfer back to Ward 2C2 on 6/7/1973. Therefore, it is apparent that the patient's welfare was not con-sidered by the transferring physician's, nor my professional judgment; also, the fact that professional nurses are delegated the responsibility for the accuracy of the orders since the physician for Wards 2B2 and 2C2 is observed to sign his name to the orders repetitively taking one chart after the other for this purpose only.

2. On July 2, 1973, I was called to a second Proficiency Counseling by Mrs. J. Cramer, RN, Clinical Coordinator, Bldg. 2. This meeting took place at approximately 8:40 a.m. in the office of the Chief Nurse, B-124, and in the presence of the Chief Nurse, Miss Helen Hennessy, RN, and Mrs. Mary Heller, RN, Clinical Coordinator, Psychiatry. During this meeting, I was not counseled by either the Chief Nurse, nor Mrs. J. Cramer, RN, Clinical Coordinator, regarding this medication incident. However, subsequently to this meeting, I was given a memorandum dated July 11, 1973. The subject of this memorandum is "Proficiency Counseling." In para. 3 of this memorandum Mrs. Cramer, RN, states:

> "...We see no change in performce. An example of this is changing of the Ward Physician's orders and proceeding to give medication as ordered by yourself. You need to follow orders as written by a physician without change or substitution. If you have questions regarding a doctor's order, you may withhold giving the medication pending clarification by the physician who wrote the order or with the O.D."

However, on the 6/8/1973, I reported to duty for the p.m. tour, the Head Nurse, Ward 2C2, informed us at the change of shift report that if this patient, Mrs. Gray, had any pain, to call the O.D.; otherwise, if the patient becomes unconscious, Dr. Burian's verbal orders (and a written order for a "No Code 66"), was to let the patient die. Therefore, I was not to call the O.D.

3. Inasmuch as this admonishment has now become a part of my proficiency record by Mrs. Cramer, RN, without investigation of the facts regarding the medication incident, I am being denied appeal rights both under the Grievance Procedure, Chapter 8, a, b, & c, for disciplinary actions; and also, under Chapter 8, Section A, para. 7.b, Appeals, which states as follows:

b) "An employee who receives an admonishment or a reprimand (from an official other than the Chief Medical Director) may appeal the decision in writing through channels to the Chief Medical Director who acts for the Administrator in rendering the decision on the appeal."

Therefore, the evidence of record shows that I am denied my appeal rights because of the decision by Mrs. Cramer, RN, who used this admonishment in my proficiency even before a decision can be ruled on by the Chief Medical Director. Concommittantly, the evidence of record also shows that this denial is supported by the Chief Nurse, Miss Helen Hennessy, RN, in a letter dated January 27, 1972, to my consultant, Mr. Frank Waltjen. This letter states in para. 2 that:

"Please refer to my letter of January 6 in which I advised you that our actions in the case of Mrs. Rogers were a part of the Proficiency Rating System for Department of Medicine and Surgery employees. These matters are neither subject to representation nor appealable."

4. Therefore, inasmuch as there is no possible resolution on the basis of record for this problem, and of those similar from past records, I am appealing to the courts for a determination if these rules are reasonably designed at this agency (VAPA) for professional nurses in the DM&S, so that the purpose of the Veterans Administration as intended by Congress for social responsi-bility, be carried out in the best interests of the public and for the welfare of Veteran patients.

Respectfully submitted,
/s/ Lynette Rogers

cc: Mr. James Ware
Attorney at Law

MOTION NO. 2
DECLARATION "A" OF LYNETTE ROGERS

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts, that:
2. I testified at my discharge Hearing on June 20, 1974, of the problems I encountered with Dr. E. Burian's medication orders and gave some specific examples.
3. These examples were in the nature of incorrect dosages such as 0.5 gm instead of .05 mg of a prescription drug ordered for several veterans.
4. Other areas of medication problems which I brought to the attention of Head Nurses in Bldg. 2 was that Dr. E. Burian ordered a veteran an antibiotic, Ampicillin, even though his chart had a red alert tag stating that he had allergies questionable to Penicillin. This veteran again experienced an unpleasant reaction to the Ampicillin he was administered. I reported this West Point Colonel patient's reaction to this medication to E. McShan, RN, Head Nurse, but was informed that if Dr. E. Burian ordered this medication again, I would have to administer it even though he had a reaction to it.
5. Between June 7, 1973 and July 21, 1973, I brought nineteen medication errors in either transcription, commission, or omission to the attention of my Head Nurses E. McShan, RN, and M. Elliott, RN. I was prohibited from being assigned the monthly checking of Dr. E. Burian's orders on Ward 2BI because of the numerous errors in these orders.

Addendum Z, attach. 7

6. Dr. E. Burian also gave nurses on Ward 2C2 verbal permission to prescribe and administer controlled substances and tranquilizers to veterans for which, if they entered the administered medication in the Ward Communication Book, he would "cover" the nurse by pre-dating the order.
7. Dr. E. Burian also pre-dated antibiotic orders for the weekend on patients' charts, thereby giving the impression that he was either contacted at home for the order, or that he personally visited the patient during the weekend.
8. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on July 11, 1992, in Mountain View, California.

_____

Lynette Rogers, Plaintiff *pro se*

Harder & Associates
160 Main Street, Suite #6
Los Altos, California 94022
Telephone (415) 941-5441

To Whom It May Concern:

I, Edward S. Piggins, hereby declare that I gave Lynette Rogers a document dated May 15, 1991 from Terresa A. Ciau, The Program Manager for the division of licensing at the Board of Medical Quality Assurance of California. This document was given to Lynette Rogers during the week of May 19, 1991.

/s/ Edward S. Piggins Jr.

April 24, 1992
STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA) ss.
Subscribed and sworn to before me this 24th day of April 1992.

/s/ Ruth Tubbs
Ruth Tubbs, Notary Public
My commission expires: 10/8/95

OFFICIAL SEAL
RUTH TUBBS
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My Comm. Expires Oct. 8, 1995

MOTION NO. 1
DECLARATION "D" OF LYNETTE ROGERS

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 73-0739 CFP, and I have personal knowledge of the following facts, that:
2. On January 28, 1977, Paul J. Fitzpatrick, Assistant United States Attorney, submitted his brief in "OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT. [Attach "a", excerpts of transcript only.]
3. Defendant introduced a document entitled, EXHIBIT A, which was alleged to be a Memorandum No. 10-74-18 dated May 3, 1974, from John D. Chase, Chief Medical Director, to Donald E. Johnson, Administrator, to change the Chairmanship of Disciplinary Boards to the "same Service against whom disciplinary action is proposed." [Attach. "b"].
4. Administrator Johnson allegedly approved this change, whereupon defendant submitted EXHIBIT B [Attach. "c"] to inform the Court that this change had, in truth, been made and that "...John D. Chase, M.D., by his Memorandum No. 10-74-18, selected the Chairman, DM&S Central Office Boards." [See Attach. "a", Trans. Ln. 26-30, p. 8].
5. The clearly established law at this time was governed by H.R. 5691 of Title 38 §4110, United States Code, which held that: "<u>The chairman and secretary...are appointed directly by the Administrator</u>." [Attach. "d"]. (Underscore supplied.)
6. On May 19, 1975, Donna S. Humes, RN,

informed Mr. Raymond P. Neal, Chief Attorney, VA Regional Office, San Francisco, that she has "...been appointed Chairman of this Board and will be the presiding officer...for directing the proceedings." [Attach. "e"].

7. Plaintiff later received a copy of a letter dated May 21, 1984, from Leslie L. Kuykendall, former Staff Special-ist, Labor Relations for the American Nurses Association, with another Memorandum, No. 10-83-31 with respect to the chairmanship of Disciplinary Boards from the Veterans Adminis-tration. [Attach. "f and g"].
8. In Memorandum No. 10-74-18 (see prev. para 3), the legal reference for this issue (DM&S Supplement, MP-5, Part II, Chapter 2) has been materially altered to fraudulently conceal this authorization.
9. Specifically, in MP-5, Part II, Chapter 2, para C, does state, that: "The membership of Professional Standards Boards will be designated by the Chief Medical Director and that the (a) Chairperson...or their alternates...will be (g) Solely of nurses to deal with nurses. However, these are for 5 PROFESSIONAL STANDARDS BOARDS and not Disciplinary Boards. [Attach. "h"].
10. In Public Law 98-160, 97 Stat 1001, Nov. 21, 1983, §205 was amended to read as follows: "The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges." Therefore, Congress was responsible for making changes in the law.

11. In 1972, the VA Central Office had the complete file on plaintiff which should have included her records showing the many instances she proposed, implemented, and utilized the contributions and team-work of various disciplines in the health field for the safe and accountable nursing care to veterans. [Attach. "i"].
12. These same records would also show that plaintiff was advised by her superiors not to develop her subordinate staff when she was a Head Nurse, nor to follow the requirements outlined in her Head Nurse duties; and no disciplinary action taken on instances of patient abuse to veterans which she reported.
13. For eighteen (18) years defendants have maintained this fraud before eleven judges presiding in seven Courts of the United States until, in December 1991, plaintiff discovered that defendants obtained a complete revision of the laws in 1990.
14. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, Plaintiff *pro se*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE ROGERS,
Plaintiff,
v.
RICHARD L. ROUDEBUSH, Director,
Veterans Administration; and
JOHN D. CHASE, M.D., Chief Medical Director,
Veterans Administration,
Defendants.

CIVIL NO. C-73-0739-CFP

POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendants contend that this action is within the exclusive jurisdiction of the Court of Claims and, therefore, should be dismissed, that plaintiff's discharge was supported by substantial evidence and was not arbitrary and capricious, that the discharge board was properly constituted, and that any delay in charges was chargeable to plaintiff, not to defendants.

Dated: January 28, 1977

JAMES L. BROWNING, JR.
United States Attorney

By: Paul J. Fitzpatrick
PAUL J. FITZPATRICK
Assistant United States Attorney

Attorney for Defendants

UNITED STATES GOVERNMENT
MEMORANDUM

TO: Administrator (00)
FROM: Chief Medical Director (10)
SUBJECT: Change in Chairmanship of Disciplinary Boards

Date: May 3, 1974

1. MP-5, Part II, Chapter 8, Section C, provides for Disciplinary Boards appointed by the Chief Medical Director to conduct hearings involving permanent physicians, dentists, nurses and nurse anesthetists when suspension for disciplinary reasons, demotion, or discharge is proposed.

2. There are separate Disciplinary Boards for each of the three services, namely, physicians and nurse anesthetists, dentists, and nurses. Each Disciplinary Board is composed of a permanent Chairman, Secretary, and one or three service members. The permanent Chairman, a physician, serves in that capacity for all of the three services indicated above.

3. It would be more appropriate for the Chairman of each Disciplinary Board to be of the same service as the employee against whom disciplinary action is proposed. This would be consistent with the chairmanship of Professional Standards Boards, which review employee appointments, advancements, and services during the probationary period.

4. I recommend that the policy be changed to provide that the Chairman of each Disciplinary Board will be of the same service as the employee involved.

Addendum Z, attach. 9-"b"

5. If approved, we will implement the change immediately pending the revision of MP-5, Part II, Chapter 8, Section C.

/s/ Laurence V. Foye, Jr., M.D.
For and in the absence of
JOHN D. CHASE, M.D.

CONCURRENCE: /s (unreadable) (05)
APPROVED/DISAPPROVED: /s/ Donald E. Johnson
DONALD E. JOHNSON
MAY 8- 1974 Administrator

Veterans Administration
Office of the Chief Medical Director
Department of Medicine and Surgery
Washington, D. C., October 10, 1974

MEMORANDUM
NO. 10-74-18

SUBJ: DM&S Central Office Boards

1. In accordance with DM&S Supplement, MP-5, Part II, the following are designated to serve on central Office Boards as indicated:

a. Special Board to recommend pay rate of persons holding CO staff assignments in Executive Grade:

Chairman - ACMD for Professional Services
Member - To be selected by Chairman

b. Professional Standards Board:

(1) For Physicians and Nurse Anesthetists:
CO Board Action on recommendations from field

Chairman - E.M. Caffey Jr., M.D.
Alternate - L.G.Christianson, M.D.

Secretary - F.J. Schaffer, M.D.
Alternate - P.C. LeGolvan, M.D.

Member - Appropriate Service Director or designee

(2) For Dentists:

Chairman - E.E. Fischer, D.M.D.
Alternate - R.R. Rhyne, D.D.S.

Secretary - N.D. Glasscock, D.D.S.
Alternate - Dental staff member

Addendum Z, attach. 9-"c"

Member - P.J. Slaven, D.D.S.
Alternate - Dental staff member

e. Disciplinary Board:
(1) For Physicians and Nurse Anesthetists:

Chairman - L.G. Christianson, M.D.
Alternate - T.J. Radley, M.D.

(2) For Dentists:

Chairman - E.E. Fischer, D.M.D.
Alternate - R.R. Rhyne, D.D.S.

Secretary - To be appointed by ACMD for Dentistry

(3) For Nurses:

Chairman - Miss H.E.Wysocki
Alternate - Mrs. D.S. Humes

Secretary - Miss K.E. McNamara
Alternate - Mrs. B. James

Member - Appropriate Service Director or designee

2. DM&S Memorandum No. 10-7-6, dated May 30, 1974, is rescinded.

/s/ John D. Chase
JOHN D. CHASE, M.D.
Chief Medical Director

Distribution: COD: (10) only plus (111) 30 SS (101B1)

Addendum Z, attach. 9-"c"

EXPLANATION OF H.R. 5691

This bill amends Title 38 of the United States Code in order to allow the Administrator of Veterans' Affairs to delegate to the Chief Medical Director in the Department of Medicine and surgery authority to act upon the recommendations of the disciplinary boards provided by section 4110 of title 38, United States Code, in the cases involving physicians, dentists, and nurses.

Present law provides that the Chief Medical Director shall appoint disciplinary boards to determine, after notice and fair hearing, the correctness of charges of inaptitude, inefficiency, or misconduct of physicians, dentists, and nurses. The chairman and secretary, however, are appointed directly by the Administrator. Recommendations are made by these boards to the administrator for approval and action. The present bill would permit the Chief Medical director to appoint the entire membership of the board, and to receive and act upon the recommendations of such board, with the employee facing disciplinary action afforded the right of appeal to the Administrator. This legislation is intended, among other things, to correct, as an example, a situation wherein a staff nurse who has been found guilty of misconduct and is slated for demotion, suspension, or discharge, must have such action personally approved by the Administrator, whereas authority to take similar disciplinary action in the case of higher ranking employees in the competitive service can be taken at lower administrative levels.

Mr. Raymond P. Neal 058
Chief Attorney
VA Regional Office
221 Main Street
San Francisco, California 94105

Dear Mr. Neal:

In accordance with Veterans Administration regulations, a Disciplinary Board hearing has been scheduled for June 16, 1975 through June 20, 1975, at Veterans Administration Hospital, Palo Alto, California, to consider the proposed discharge of Lynette Rogers, R.N. A pre-hearing conference will be held at 9:30 a.m. on Monday, June 16, 1975, in Room C-241B, Building 6, Palo Alto Division, after which we will start the formal hearing.

I have been appointed Chairman of this Board and will be the presiding officer responsible for directing the regular and proper conduct of the proceedings.

Please furnish me a list of the witnesses you are requesting to have called and briefly state the general nature of their testimony. If you plan to call witnesses who are not VA employees, it will be your responsibility to arrange for their appearances.

If you need additional information or have any questions concerning the content of this letter, please do not hesitate to contact me.

Sincerely yours,
/s/ Donna S. Humes
Chairman, Disciplinary Board

Lynette Rogers
Nursing Service

Addendum Z, attach. 9-"e"

Office of Personnel and Labor Relations
Washington DC 20420
(stamped Labor Relations MAY 21 1984)

Veterans Administration
MAY 16, 1984

Mr. Les Kurkendahl
Staff Specialist, Labor Relations
American Nursing Association
2420 Pershing Road
Kansas City, Missouri 64108

Dear Mr. Kurkendahl:

As you requested, enclosed are Department of Medicine and Surgery (DM&S) memorandums 10-74-6, 10-74-18, and 10-83-31 and the May 3, 1974, memorandum on the chairmanship of Disciplinary Boards.

We appreciate your interest in this matter and hope this information is useful to you.

Sincerely yours,
/s/ Earl W. Koteen
Chief, Title 38 Health Care
Personnel Division

Enclosures

Veterans Administration
Office of the Chief Medical Director
Department of Medicine and Surgery
Washington, D.C. November 16, 1983

MEMORANDUM
10-83-31

SUBJ: DM&S Central Office Boards

PURPOSE. This memorandum is issued to identify the membership for Professional Standards Boards, Special Boards, Physical Standards Boards, Screening Committees, and Disciplinary Boards.

POLICY. Professional Standards Boards will be established by the Chief Medical Director, or designee, where appropriate, to act on the appointments and advancements, and conduct of probationary reviews of physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries.

ACTION. The following are designated to serve on Central Office Boards as indicated:

Special board to recommend pay rate of persons holding CO staff assignments in Executive grade:

Chairperson, ACMD for Professional Services or designee
Member and Secretary to be selected by Chairperson

Professional Standards Boards for:
(1) Physicians and Nurse Anesthetists
Chairperson, James E. Baker, MD;
Alternate, Robert L. Custer, MD

Secretary, Neil S. Otchin, MD;
Alternate, Harold E. Booker, MD
Member, appropriate Service Director or designee

(2) Dentists and Expanded-Function Dental Auxiliaries:
Chairperson, Chester P. Paczkowski, DDS;
Alternate, John N. Trodahl, DDS
Secretary, Louis B. Jannetto, DDS
Alternate, Eugene E. Fischer, DMD
Alternate and Member to be designated by ACMD for Dentistry.

(3) Nurses:
Chairperson, Margaret I. Williams, RN;
Alternate, Kathleen Fitzgerald, RN
Secretary, Hazel Bahr, RN
Alternate, LaVerne Smith, RN
Member, as designated by Chairperson

e. Disciplinary Boards for:
(1) Physicians, Podiatrists, Optometrists, Nurse Anesthetists and Physician Assistants:
Board #1--Chairperson, James J. Smith, MD;
Alternate, Stewart L. Baker, MD
Secretary, Members and their Alternates to be selected by the chief Medical Director or designee on recommendation of the ACMD for Professional Services.
Board #2--Chairperson, Lawrence B. Hobson, MD; Alternate, Harold E. Booker, MD
Secretary, Members and their Alternates to be selected by the Chief Medical Director or designee on recommendation of the ACMD for Professional Services.

(2) Dentists and Expanded-Function Dental Auxiliaries:
Chairperson, Chester P. Paczkowski, DDS;
Alternate, Eugene E. Fischer, DMD
Secretary, Members and their Alternates to be selected by the Chief Medical Director on

recommendation of the ACMD for Dentistry.

(3) Nurses:

Chairperson, Margaret deWever, RN, Ed.D.;

Alternate to be selected by the Chief Medical Director or designee on recommendation of the ACMD for Professional services or Deputy ACMD for Nursing Programs, as appropriate.

Secretary, Yvonne Moody, RN

Member, LaVerne Smith, RN;

Alternates to be selected by the Chief Medical Director or designee on recommendation of the deputy ACMD for Nursing Programs.

4. REFERENCES. DM&S Supplement, MP-5, Part II, Chapter 2, and VA Circular 00-80-5.

5. RESCISSIONS. CMD Memorandum 10-80-28, dated December 30, 1980.

6. FOLLOWUP RESPONSIBILITY. ACMD for Professional Services.

/s/ D. Custis
DONALD L. CUSTIS, M.D.
Chief Medical Director

DISTRIBUTION: COD: (10) only
SS (11) FLD: RD-2 each
EX: Box 52-1

c. License or Registration

(1) Physicians, dentists, [podiatrists, optometrists,] nurses and nurse anesthetists will be required to furnish official evidence of the statutory requirements of licensure or registration, as appropriate, before being appointed under authority of 38 U.S.C. 4103, 4104(1) or 4114(a)(1)(A) and (B). The maintenance of current registration as a graduate nurse in an active status in one of the States or Territories of the United States, or in the District of Columbia, is a continuing qualification for all nurses and nurse anesthetists. Physicians , dentists, [podiatrists, and optometrists] will also maintain a current registration in their State of licensure if this is a requirement of the particular State for continuing, active, current licensure.

(2) The requirement that licensure or registration, as appropriate, must be in a "State" may be waived by the Chief Medical Director, or [ ] designee, for appointments of physicians, dentists, [podiatrists, optometrists,] nurses and nurse anesthetists under 38 U.S.C. 4114 in the following instances:

(a) The physician, dentist, [podiatrist or optometrist] is assigned to a research or academic post or to a position having no direct responsibility for the care of patients.

(b) The physician, dentist, [podiatrist, optometrist,] nurse, or nurse anesthetist is to serve in a country other than the United States and is licensed or registered in that country.

d. Qualification Standards

(1) Specific standards in terms of

professional attainment and years of experience shall be established by the administrator for the purpose of determining the appropriate grade level to which appointments may be authorized under 38 U.S.C. 4104(1) and 4114. The Chief Medical Director will recommend appropriate standards for approval.

(2) The grade to which an applicant will be appointed shall be determined by qualifications for assignment as a physician, dentist, [podiatrist, optometrist,] nurse, nurse anesthetist, [PA or EFDA in DM&S]

(3) Approved schools of medicine, osteopathy, dentistry, [podiatric medicine, optometry,] and nursing, and satisfactory internships, [or their equivalents,] for the purpose of 38 U.S.C. 4105, will be those designated by the Administrator upon recommendation of the chief Medical Director.

[Authority: 38 U.S.C. 210(c)(1), 4108; 38 U.S.C. 4104, 4105, 4106(a), 4114.]

5. PROFESSIONAL STANDARDS BOARDS

a. Professional Standards Boards will be established by the Chief Medical Director, or designee, [where appropriate, to act on the appointment and advancements, and conduct of probationary reviews of physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, PAs and EFDAs.]

b. Professional Standards Boards will determine eligibility and [recommend] the appropriate grade for appointments under authority of 38 U.S.C. 4104(1) and 4114(a)(1)(A); [recommend candidates for advancements, and as prescribed by the Chief Medical Director, conduct professional examinations; and conduct probationary reviews.] However, action by

Professional Standards Boards is not required for nurses being considered for a temporary full-time appointment under 38 U.S.C. 4114(a)(1)(A) pending processing of a subsequent probational appointment.

c. The membership of Professional Standards Boards will be designated by the Chief Medical Director, or designee, and shall be composed as follows for:

(1) [Physicians, dentists, nurses, nurse anesthetists, PAs and EFDAs.

(a) Chairperson, a secretary and one or three members, or their alternates.

(b) Solely of physicians to deal with physicians.

(c) Physicians to deal with nurse anesthetists except that when a Board is composed of three members, one of the members may be a nurse anesthetist and when a Board is composed of five members, two of the five members may be nurse anesthetists.

(d) Physicians to deal with PAs except that when a Board is composed of three members, one member of the Board may be a PA, and when a Board is composed of five members, two members of the Board may be PAs.

(e) Solely of dentists to deal with dentists.

(f) Dentists to deal with EFDAs except that when a Board is composed of three members, one of the three members may be an EFDA and when a Board is composed of five members, two of the five members may be EFDAs.

(g) Solely of nurses to deal with nurses.

(2) Podiatrists and optometrists.

(a) Chairperson, a secretary and one member or their alternates.

1. One physician and two podiatrists to deal with podiatrists.

Addendum Z, attach. 9-"h"

2. One physician and two optometrists to deal with optometrists.

d. The Personnel Officer, or a designated member of that official's staff, will serve as technical advisor to the Professional Standards Board in the performance of its functions and will be responsible for insuring that all regulatory and administrative requirements for appointments, advancements, and probationary reviews are met.

Authority: 38 U.S.C. 210(c)(1), 4108; 38 U.S.C. 4106(a)(b)(c).]

6. APPOINTMENTS AND DESIGNATIONS UNDER 38 U.S.C. 4103

a. Appointments made by the Administrator under authority of 38 U.S.C. 4103 will be limited to a period of 4 years. These appointments may be renewed for successive like periods. Any ??? appointments or reappointments may also be extended by the Administrator for a period not to exceed 3 years.

Veterans Administration Hospital
3801 Miranda Avenue
Palo Alto, California 94304
Oct 19, 1972 In Reply
Refer to: 640/00

Mr. Frank Waltjen, Consultant
AFGE, Local 2110
Veterans Administration Hospital
Box V-11, 3801 Miranda Avenue
Palo Alto, California 94304

SUBJ: Complaint - Mrs. Lynette Rogers, R.N.

This will acknowledge receipt of your letter of October 11, 1972, regarding the complaint of Mrs. Lynette Rogers. I am sure that you are aware that the entire file has been forwarded to Central Office for their advice and guidance.

/s/ A.M. Gottlieb
A.M. GOTTLIEB, M.D.
Hospital Director

Addendum Z, attach. 9-"i"

U.S. Department of Justice
United States Attorney
Northern District of California
16th Floor Federal Building - Box 36055
450 Golden Gate Avenue
San Francisco, California 94102
February 15, 1984

Albin E. Danell, Esq.
Attorney at Law
111 W. St. John St., Suite 650
San Jose, CA 94113

Re: Lynette Rogers v. V.A., et al.
Civil No. C-83-20374 WAI

Dear Mr. Danell:

This letter is to confirm our telephone conversation of yesterday, in which we agreed that the deposition of Dr. Robert Burr, noticed for February 28, 1984, be taken off calendar. The reason for this agreement is that the deposition actually relates to the case of Lynette Rogers v. U.S. Department of Labor, et al., Civil No. C-83-0719 JPV, and not this case. (In that case, Dr. Burr examined Mrs. Rogers in the summer of 1977, in connection with a disability claim, pursuant to a Department of Labor request.) Also, in this case against the Veterans Administration, defendants have moved to dismiss or for summary judgment, said motion to be heard on March 12, 1984. Finally, undersigned counsel will be out of the state the week in which you noticed the deposition.

We also agreed that I would relay your notice of deposition of Doctor Burr to Assistant United States Attorney Deborah Shefler of this office, who is handling your case against the Department of Labor. Ms. Shefler will be submitting a proposed judgment within a few days, and informed me that she would thus not agree to any

deposition of Dr. Burr, or any other discovery in that area.

I have read the transcript of the January 17, 1984, hearing in front of Judge Vukasin, and Ms. Shefler's statements are accurate. Furthermore, it is apparent from that transcript that you were aware that Dr. Burr's testimony related to that case and not this case against the Veterans Administration. Dr. Burr's involvement in these matters did not even start until well after the termination of Rogers v. V.A., Civil No. C-73-0739 CFP. In this action, your complaint is limited to alleged fraud by an Assistant U.S. Attorney in the prior case in February of 1977. For that reason, I will vigorously oppose any future attempt to depose Dr. Burr in this case, and, if forced to file any motion in order to do so, will request sanctions under Rules 230-5 and 100-3 of the Local Rules of Court for the Northern District of California.

Finally, a reading of the Rogers v. Department of Labor case in front of Judge Vukasin reveals that you have violated Local Rule 205-2 by not filing a Notice of Related Case when you filed Rogers v. Veterans Administration, et al., Civil No. C-83-20374 WAI. That rule requires counsel to file such a notice whenever counsel has reason to believe a case is related to another case in this court.

A reading of the full text of the rule makes it clear that such notice should have been filed. Ms. Rogers is seeking relief in both cases from incidents arising out of her employment as a nurse for the Veterans Administration and her termination in November of 1975 . The cases are related and therefore I am filing a "Notice of Related Case." This will not affect the March 12, 1984, hearing of defendants'

motions, unless Judge Ingram transfers the case to Judge Vukasin in the interim.

I anticipate your responses to the Motion to Dismiss or, in the alternative, for Summary Judgment, and to the Notice of Related Case, in accordance with the Local Rules of this Court, if, in fact, you intend to pursue this action.

Very truly yours,
JOSEPH P. RUSSONIELLO
United States Attorney
By: /s/ William T. McGivern, Jr.
Chief Assistant United States Attorney
Attorneys for Defendants

June 23, 1972

Mrs. Lynette Rogers, R.N.
Nursing Service, Ward 2-C-1
624 Cornelia Court
Mountain View, California 94060

A.M. Gottlieb, M.D. Director
Veterans Administration Hospital
3801 Miranda Avenue, Rm. 1-B-105
Palo Alto, California 94304

Grievance, hearing, Request for
(a) MP-5, Part II, Chapter 8, Section B,
Paragraph 5
Disclosure of information from Official
Personnel Folder to unauthorized persons.

A grievance is being submitted in accordance with the provisions of reference (a) and applicable DM&S regulations to seek corrective action and redress on a matter of grave concern to me as a professional nurse.

It has been called to my attention that the Chief, Personnel Officer, Carl P. Hollenhorst, has taken the liberty without just cause, to discuss my past employment record with Mr. Robert Kludt Jr., President of AFGE Local 2110, in either the month of April or May 1972. It is apparent that this information is being communicated to the VA Central Office in Washington, D.C. as well.

I believe that I honestly reported incidents of my past employment record in my application for employment with the VA which should have no consequence on my present status and my tenure of almost five years at this hospital.

It is apparent that every effort is being made to impugn my integrity as a professional nurse and to black-list me in the pursuit of my professional career. I believe that his actions are arbitrary, capricious and unwarranted and certainly

cannot be condoned in our democratic society.

The corrective action I seek is to cease and desist his actions and to refrain from discussing my case history and past records with persons not authorized in accordance with applicable policies within the Veterans Administration DM&S Regulations.

Further, that I be permitted to review my official personnel folder with the express purpose of purging any and all records which may be out-dated and obsolete.

It is hereby requested that I be granted immunity and protection and or treated unprejudicially in connection with the exercising of my rights under the applicable grievance procedures. It is apparent that I was not afforded these rights in the past which is one of the basic reasons for the impromptu discussion with the president of AFGE Local 2110 to discourage representation of my own choice in my pending grievance.

It is hereby requested that Mr. Frank Waltjen, Labor Consultant be accorded the opportunity to be present at any informal or formal discussions in connection with this issue and that he be duly notified of any such meetings scheduled.

My grievance as submitted is in no way connected with Nursing Service and involves the Chief, Personnel Officer, therefore I am obligated to submit it directly to the director for disposition.

Respectfully submitted

Mrs. Lynette Rogers, R.N.

cc: The Honorable C.S. Gubser
Calif. Nursing Assn.
AFGE Local 2110

Veterans Administration Hospital
3801 Miranda Avenue
Palo Alto, California 94304
July 5, 1972

Mrs. Lynette Rogers, R.N.
c/o Nursing Service (118)
Veterans Administration Hospital
3801 Miranda Avenue
Palo Alto, California 94304

Dear Mrs. Rogers:

I received your letter of June 23, 1972, subject: Grievance, hearing, request for, on June 26, 1972.

As you are aware, VA Manual MP-5, Part II, Chapter 8 requires me to attempt to settle a grievance on an informal basis and give you a reply within ten days or explain the delay.

I have sent a letter to Mr. Kludt, a copy of which is enclosed, asking him for information about the alleged disclosure of your past employment record. I have received his reply and we had a discussion of his statements.

Unfortunately, Mr. Hollenhorst is abroad on leave and will return next week, at which time I will ask him about the alleged disclosure. There will therefore be a slight delay in attempting to resolve this grievance on an informal basis.

Sincerely yours,
/s/ A.M. Gottlieb
A.M. GOTTLIEB, M.D.
Hospital Director

Enclosure

AFGE
Local 2110
Veterans Administration Hospital
VA Hospital
Box V-11
3801 Miranda Avenue
Palo Alto, California 94304
July 21, 1972

A.M. Gottlieb, M.D.
Director
VA Hospital
3801 Miranda Ave.
Palo Alto, CA 94304

Dear Mr. Gottlieb:

During the discussion by the Executive Board of Local No. 2110 of the letter written on July 3rd regarding the Lynette Rogers case, it was disclosed that there evidently was a discussion of Lynette Rogers past work record by Mr. Hollenhorst.

Since this discussion had no significance on this case, it was ignored by the President of the Local.

Sincerely yours,
/s/ Robert Kludt, Jr.
President

/s/ Elizabeth R. DesPlanques
Secretary-Treasurer

/s/ Charles Jones
Second Vice-President

/s/ Leroy Mustiful
Second Vice-President

/s/ Samuel DesPlanques
Second Vice-President

/s/ Roger L. Watts
Sergeant-at-Arms

/s/ Henry Beltran
Executive Vice-President

Addendum Z, attach. 15

AFGE
Local 2110
Veterans Administration Hospital
VA Hospital
Box V-11
3801 Miranda Avenue
Palo Alto, California 94304
September 11, 1972

Re: 640/00
Mrs. Lynette Rogers, R. N.

A. M. Gottlieb, M. D.
Hospital Director
VA Hospital Rm 1-B-105
3801 Miranda Avenue
Palo Alto, California 94304

Dear Doctor Gottlieb:

This is in reply to your letter dated September 7, 1972, reference to the request for a hearing submitted to your office by letter dated June 23, 1972, and subsequent inquiry dated August 28, 1972, requesting status of the case of Mrs. Lynette Rogers.

In response to your letter of September 7, 1972, citing specific required statements of the grievance in accordance with provisions of paragraph 7b, Section B, Chapter 8, VA Manual MP-5, Part II.

1, The letter of June 23, 1972, requesting a hearing contains the statement that; "...the Chief, Personnel Officer, Mr. Carl Hollenhorst, has taken the liberty without just cause, to discuss my past employment record with Mr. Robert Kludt Jr., President of AFGE Local 2110, either in the month of April or May 1972..."

To satisfy the requirements as specified the following is added;

Mrs Rogers attended the Executive Board meeting of AFGE Local 2110 during the first Tuesday of June, 1972, to ascertain and confirm rumors that her past employment

record had been discussed with Mr. Robert Kludt Jr., President of AFGE Local 2110. Mrs. Rogers first learned of the incident on June 5, 1972, when Mr. Kludt confirmed that her past employment record was discussed and that Mrs. Rogers case was a topic of discussion with the negotiations committee in May 1972.

It is now apparent that further derogatory information has been indiscreetly released to the Honorable Congressman Charles S. Gubser by letter dated July 11, 1972, relating to the "...long history to her problems here involving both employees who supervise her and employees she supervised."

2. The letter of June 23, 1972, requesting the hearing contains the statement that; "It is apparent that every effort is being made to impugn my integrity as a professional nurse and to black-list me in the pursuit of my professional career..", which is of grave concern and apparent unfair treatment.

3. The letter of June 23, 1972, requesting the hearing contains the statement that; "The corrective action I seek is to cease and desist his actions and to refrain from discussing my case history and past records with persons not authorized in accordance with applicable policies within the Veterans Administration DM&S Regulations."

4. The letter of June 23, 1972, requesting the hearing does not contain the summary of the result of any informal attempts to obtain a satisfactory adjustment because of the nature of the grievance and apparently VA Manual, MP-5, Part II, Chapter 8, Section B, paragraph 8, provides for exploration of an informal settlement, to possibly preclude the need for a hearing.

It is hereby requested that consideration be given to schedule a hearing in accordance with the provisions of VA Manual MP-5, Part II, Section B, Chapter 8. It is requested that the letter dated July 21, 1972 signed by the members of the Executive Board of Local 2110 be considered as supporting evidence as well as the letter dated July 11, 1972 to the Honorable Congressman Charles S. Gubser to confirm the fact that derogatory information and unsupported statements are being released.

Your consideration in accepting the grievance as amended will be appreciated.

Sincerely,
/s/ Frank Waltjen
Frank Waltjen, Consultant

cc; Mrs. L. Rogers
Charles S. Gubser
Cal. Nurses Assn. S. F.
AFGE Local 2110

VETERANS ADMINISTRATION HOSPITAL
3801 Miranda Avenue
Palo Alto, California 94304

In Reply Refer to: 640/00

September 29, 1972

Mr. Frank Waltjen, Consultant
AFGE, Local 2110
Veterans Administration Hospital
Vox V-11, 3801 Miranda Avenue
Palo Alto, California 94304

Dear Mr. Waltjen:

Please refer to my letter of July 11, 1972 and September 7, 1972 in each of which you were advised of the require-ment of specificity as stated in Paragraph 7B, Section B, Chapter 8, Part II, VA Manual MP-5.

To date we have not received a communication from you or from your client which sufficiently defines your complaint. When and if such a document is received, action will be taken to hear your complaint. Since in this case we are dealing with instructions issued under regulations promulgated by the Administrator of Veterans Affairs, we have sent your letter of September 11, 1972 to Central Office for advice and guidance. You should also be aware of the content of Sub-chapter 7 of Chapter 494, Federal Personnel Manual, which provides Management officials with considerable latitude in utilizing information of record in the Official Personnel Folder in pursuing Management objectives.

We have been advised that representatives of the Chief Medical Director, Mr. Carl Sickles and Mrs. Arlene Bence, are on the West Coast and will be stopping in Palo Alto. While here they have been instructed

to also look into Mrs. Rogers' complaints. The question of hearing this complaint may be discussed at that time. You are being contacted to coordinate their visit.

Sincerely yours,
/s/ Franklin Johnson M.D.
For and in the absence of
A. M. GOTTLIEB, M.D.
Hospital Director

AFGE
Local 2110
Veterans Administration Hospital
VA Hospital
Box V-11
3801 Miranda Avenue
Palo Alto, California 94304
October 10, 1972

A. M. Gottlieb, M. D.
Hospital Director 640/00
VA Hospital Rm 1-B-105
3801 Miranda Avenue
Palo Alto, California 94304

Dear Doctor Gottlieb:

This is in reply to your letter dated September 29, 1972 which was received on Monday October 2, 1972 reference to your letter of July 11, 1972 in which you advised of the requirement of specificity as stated in paragraph 7B, Section B, Chapter 8, Part II, VA Manual MP-5 in connection with the grievance of Mrs, Lynette Rogers.

The undersigned advised you by letter dated September 11, 1972 that our letter requesting a hearing dated June 23, 1972, did in fact comply with the requirements of Chapter 8, VA Manual, MP-5, Part II, furthermore evidence supporting our allegations was attached to our request. (Letter dated July 11, 1972, to Honorable Congressman Charles S. Gubser)

Inasmuch as the letter of July 11, 1972 contained derogatory information reference to the "...long history of her problems here involving both employees who supervise her and employees she supervised." which was the basic initial charge of releasing information to unauthorized persons relative to her employment record, we request that the actual record of the allegations be made available to the appellant.

We are concerned relative to the contents of Subchapter 7 of Ch Chapter 294, Federal

Personnel Manual in which you allege that Management officials have considerable latitude in utilizing information of record in the Official Personnel Folder in pursuing Managements objectives.

First we fail to recognize chapter 494 of the FPM as you indicate and we fail to recognize Managements objectives in your letter to the Honorable Congressman Charles S. Gubser except that the unsupported statements will achieve the objective of impugning the integrity and character of the aggrieved.

Both Mrs. Rogers and I met with Mr. Carl Sickles and Mrs. Arlene Bence on Tuesday afternoon October, 3, 1972 and we advised them that we were not aware of any records pertaining to allegations made to the Honorable Congressman Charles S. Gubser. Although this specific complaint was discussed we have had no assurance that some corrective measures would be forthcoming.

We note for the record that the Grievance Procedure, VA Manual Mp-5, Part II, Chapter 8, paragraph 8, provides for requesting a hearing officer and at the same time exploring the possibility of seeking an informal adjustment of the grievance. We would be in favor of such an action.

In view of the fact that the burden of proof is on management to support their allegations and the seriousness of the charges we believe that a hearing is in order and the necessity of examination of witness under oath is in order.

We urge that specific chapters, subchapters and paragraphs be clearly identified when reference to the Federal Personnel Manual is required or quoted. Your letter makes reference to Chapter 494 of the Federal Personnel Manual, Subchapter 7, as the basis for the authority of

releasing information from the official personnel folder.

We hereby request full consideration in our request for the hearing in connection with this specific complaint.

Respectfully

Frank Waltjen, Consultant

cc; Congressman Gubser
Mr. Carl Sickles

Veterans Administration Hospital
3801 Miranda Avenue
Palo Alto, California 94304
JUL 11 1972

Mrs. Lynette Rogers, R.N. (118)
Veterans Administration Hospital
3801 Miranda Avenue
Palo Alto, California 94304

Dear Mrs. Rogers:

I have reviewed your letter of June 23, 1972, in which you make certain allegations in connection with your employment at this hospital. I have looked into those allegations and I am advising you accordingly.

The matter of reviewing your official personnel folder has been arranged. I have made an appointment for you in Room 1-C-105, at 10:00 a.m., July 13, 1972, to review your folder following the usual agency practice. This is a right of all employees and does not require any formal request. All employees have been advised of this fact a minimum of twice each year thru VAPA-Trails publications.

You state that apparently information is being communicated to the VA Central Office in Washington, D.C. At the request of central Office, your official personnel folder was forwarded to them as a part of consideration of previous requests on your part. In addition, your letter (copy attached) in which you disclose previous employment history to Congressman Gubser was forwarded to Central Office by him and to us in accordance with usual practices in preparation of replies to congressional correspondence. No other communic-ations, verbal or written, have occurred between Mr. Hollenhorst and Central Office relating to your previous employment.

Addendum Z, attach. 19

Mr. Hollenhorst is not aware of any incident in which he disclosed any past employment record in your case to anyone, including Mr. Kludt. In fact, he states that he was unaware of the Kaiser Hospital incident until it was disclosed by you in your congressional letter. To further verify this, I posed the following four questions to Mr. Kludt and have appended his response:

1. Did Mr. Hollenhorst at any time give you the personnel file of Mrs. Lynette Rogers to review?

2. Did you at any time in your position as President of the Local of which Mrs. Rogers is a member review her personnel file in the Personnel Office?

3. Did Mr. Hollenhorst in April or May discuss with you or any of the past employment record of Mrs. Rogers (by past, we are assuming prior to her VA employment)?

4. If you know anything of Mrs. Rogers' employment record prior to her VA employment, do you actually have knowledge of her prior employment from her, or from the other officers of the Union, including your consultant?

Unless you are able to provide more specific facts, including the nature of the disclosure, the time and place this occurred, and the people present, I will take no further action in this case.

Insofar as the corrective action you desire, you may rest assured that no further discussion of your previous employment, either within the VA or prior to VA employment, will occur unless initiated by you.

Thank you for calling this matter to my

attention and I sincerely hope that the actions I have taken will obviate the need for any further review.

Sincerely yours,
/s/ A.M. Gottlieb
Hospital Director

Enclosures:
Ltr 5/18/72 w/encl.
Ltr 7/3/72

Hospital Director (00)
THRU: Chief of Staff (11PA)
Chief, Nursing Service (118)
October 8, 1970

Graduate Education in Health Care Administration request for Lynette G. Rogers, RN, Full/3, DM&S

1. Mrs. Lynette G. Rogers, RN, has been interviewed. The VA Form 5-4669 ??? completed by her immediate supervisor and the ACMS GM&S is attached. Mrs. Rogers is recommended as an eligible and qualified candidate for graduate education in health care administration.
2. Mrs. Lynette Rogers has been employed in the GM&S Nursing Service since April 1968. Her work performance has been highly satisfactory. Since November 1969 she has been relief night nursing supervisor on the GM&S wards as well as night float. She is intelligent and creative. She submitted a suggestion for formation of a Committee to Study Improved Staffing Methods on the GM&S Service in May 1970. She has been chairman of this group and has ably defined the project clearly to the group. She has organizational ability in planning and carrying out assignments effectively.
3. Mrs. Rogers' behavioral range evidences commendable adaptability. She adjusts to changing work situations without visible stress. On occasion she has difficulty in modifying her behavior to fit changing situations and individuals. Her range of interests are broad. She is very knowledgeable in complex nursing procedure as well as the psychological implications in nursing care. She has traveled extensively abroad having lived

in England, Canada and India. She is intelligent and creative. She graduated RN from the Medical College Hospital, Calcutta, India in 1943 and received her B.S. in Nursing at San Jose State College, minoring in Psychology, in 1967. Conceptual skills are shown in her ability to absorb new facts and concepts quickly; she analyzes complex issues and problems thoroughly and quickly. She is conscientious in checking any questionable Doctors' orders and refers to proper authority or medical reference material before giving unfamiliar medications or treatment.

4. Mrs. Rogers assesses the situation and readily recognizes advantages and disadvantages of alternate plans before making a decision. She usually makes sound decisions based on experience, present effort and future outcome. She has the courage of conviction and the capability of action in the decision making process.
5. Mrs. Rogers maintains high goals and she is capable of giving direction to and coordinating the activities of others to accomplish a task. This was particularly noted when she served as the relief night supervisor since November 1969 to present. At times it is difficult for her to elicit cooperation from coworkers who appear not to live up to her expectations.
6. Her interpersonal impact with others is predominated by her sense of fairness readily recognized by superiors, peers and subordinates alike. She speaks in a clipped British accent which initially on occasion has given people an haughty impression, but subsequent contact has ameliorated this. She is recognized throughout the hospital for her ability to present facts clearly and logically

both verbally and in writing. On occasions she encounters difficulty in handling controversial or delicate matters skillfully.

7. Her dual role as night relief supervisor and float night relief on the ten GM&S wards showed ability in organizing and planning. She is able to usually arrange work and relate it to the appropriate order of priority. She plans for the future for nursing cover-age on the night tour of duty and with a team approach to supervision has improved nursing coverage on GM&S units.

8. She absorbs new facts and concepts quickly and she has the ability to readily communicate necessary facts as previously noted.

9. Most of the time she maintains her composure in stressful situations. She has a sensitivity to people showing perception and a great deal of awareness to the needs and feelings of others. This is especially true when relating to patients. She is extremely sincere in her profession endeavors. She continuously attends college and plans to eventually obtain her Masters Degree. Sometimes she has difficulty objectively evaluating herself, her coworkers and her teachers.

HELEN F. HENNESSY, RN

Attachment: (1) VA Form 5-4669

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts:
2. On 4-14-71, Chief Nurse H. Hennessy, RN, instituted a Nursing Practice Committee "...to provide for safe and effective nursing care."
3. As Head Nurse, Ward 1B5, I was continually taking measures for safe nursing care as shown, by one example, with respect to medications. [Attach. "a"].
4. When I was demoted and re-assigned from Head Nurse to Staff Nurse in Bldg. 2, I was continually confronted with many unsafe measures for nursing care to veterans especially with identification.
5. One example was published in the Nursing Service Administration Meeting on June 17, 1971, which reported that: "Patients are getting to the Operating Room without identabands and/or wrong information. Some of these patients are sedated and/or psychiatric patients making identification very difficult."
6. In Bldg. 2, I found as many as sixteen patients without identabands. When I was first assigned medication nurse on Ward 2B1, I discovered that several patients to whom I was required to administer medications had no identa-bands. The Head Nurse then detailed an aide to identify each patient by name so that I could complete this assignment expeditiously so that veterans could keep their appointments.
7. I proposed a possible solution to this problem, and even though the idea

was not practical, we all became very aware of problems when a patient did not wear an identaband. For example, a confused patient was lost in San Francisco for three days after wandering away from the group of veterans who attended a ball game in Candlestick Park. [Attach. "b"].

8. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, plaintiff *pro se*

UNITED STATES GOVERNMENT
MEMORANDUM
DATE : 8/10/1971
TO : Chief, Nursing Service (118)
FROM : Head Nurse, Ward 1B5

SUBJECT: Medication error by Mrs. C. Cutler, RN

To facilitate a preclusion of medication errors that may be attributed to inadvertent deciphering by presumption, I am encouraging all nurses who are responsible for administering medications to take the following precaution:

> To check all medication tickets with the CMT sheets at the beginning of the tour prior to the administration of medicines for that tour.

/s/ Lynette Rogers, RN

Addendum Z, attach. 21-"a"

SUGGESTION (Taken from rough notes) After assuring Mrs Cramer, Superviros/Coordinator that I will think of something as an alternative for resolving the problem of missing identa-bands.

Ward 2B2.

PROBLEM:

Patients in Bldg. 2 frequjently have identa-bands missing. The main probable reason is that patients remove them themselves because ofthe following reasons:

1) Many of the patients areunrreliable, therefore, the identa-band is of no significance to them.
2) Some of the patients attend social functions, therefore, the identa-bank has apparent negative connotations.
3) Some patients go home on pass, their statusas patients accompanies them because of the attached identa-band.

SOLUTION:

Since patients in Bldg. 2 are generally not suicidal, a suggestion is made that male patients be permitted to wear "dog tag" identifications.

Advantages are as follows:

1) They can be concealed under shirts for occasions that do not require patient identification.
2) They can be more acceptable to male patients since they are familiar with their significance during service days.
3) The will preclude additional secretarial or nurse time by frequent reapplications because of deterioration of illegibility due to long-term use.
4) Only one tag should be necessary at time of admission or transfer to Bldg. 2.
5) They could be adjusted to fit neck.

EMPLOYEE SERVICE STATEMENT
(See information on reverse)

1. NAME (Caps) Last-First-Middle
ROGERS, LYNETTE GERTRUDE MRS.
2. BIRTH DATE (Mo.,Day,Yr.)
5-19-22
3. SOCIAL SECURITY NO.
549-62-6833
4. STATEMENT NO
1
5. SERVICE SUMMARY
A. PREVIOUS CIVILIAN SERVICE
NONE
B. SERVICE PERFORMED IN THIS AGENCY
FROM: 4-15-68 TO: 11-8-75
SERVICE: 7 YRS 6 MOS 24 DAYS
CIVIL SERVICE RETIREMENT DEDUCTIONS:
YES (indicated by X)
C. MILITARY SERVICE:
NONE
D. ACCUMULATE ALL SERVICE AND ENTER
TOTAL SERVICE HERE: 7 YRS 6 MOS 24
DAYS
6. COMPLETE THIS ITEM ONLY FOR EMPLOYEES SEPARATING FROM POSITIONS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM - YOUR RETIREMENT BENEFIT, BASED ON THE ABOVE SEPARATION, IS INDICATED BELOW:
LUMP SUM REFUND ONLY (is indicated by XX)
7. REMARKS CONCERNING SERVICE ENTRIES ABOVE:
None entered.
8. SIGNATURE OF EMPLOYEE - DATE
(typed) LYNETTE G. ROGERS - no date
9. SIGNATURE OF AGENCY OFFICIAL - DATE
/s/ Wm L. Hicks 11-6-75
10. TITLE OF AGENCY OFFICIAL
VAH Chief, Personnel Service
11. AGENCY NAME, INCLUDING BUREAU AND DIVISION AND ADDRESS
Veterans Administration Hospital
3801 Miranda Ave.
Palo Alto, CA 94304

Addendum Z, TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts:

2. On 4-14-71, Chief Nurse H. Hennessy, RN, instituted a Nursing Practice Committee "...to provide for safe and effective nursing care."

3. As Head Nurse, Ward 1B5, I was continually taking measures for safe nursing care as shown, by one example, with respect to medications. [Attach. "a"].

4. When I was demoted and re-assigned from Head Nurse to Staff Nurse in Bldg. 2, I was continually confronted with many unsafe measures for nursing care to veterans especially with identification.

5. One example was published in the Nursing Service Administration Meeting on June 17, 1971, which reported that: "Patients are getting to the Operating Room without identabands and/or wrong information. Some of these patients are sedated and/or psychiatric patients making identification very difficult."

6. In Bldg. 2, I found as many as sixteen patients without identabands. When I was first assigned medication nurse on Ward 2B1, I discovered that several patients to whom I was required to administer medications had no identa-bands. The Head Nurse then detailed an aide to identify each patient by name so that I could complete this assignment expedi-tiously so that veterans could keep their appointments.

7. I proposed a possible solution to this problem, and even though the idea

Addendum Z, attach. 21

was not practical, we all became very aware of problems when a patient did not wear an identaband. For example, a confused patient was lost in San Francisco for three days after wandering away from the group of veterans who

attended a ball game in Candlestick Park. [Attach. "b"].

8. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, plaintiff *pro se*

UNITED STATES GOVERNMENT
MEMORANDUM
DATE : 8/10/1971
TO : Chief, Nursing Service (118)
FROM : Head Nurse, Ward 1B5

SUBJECT: Medication error by Mrs. C. Cutler, RN

To facilitate a preclusion of medication errors that may be attributed to inadvertent deciphering by presumption, I am encouraging all nurses who are responsible for administering medications to take the following precaution:

To check all medication tickets with the CMT sheets at the beginning of the tour prior to the administration of medicines for that tour.

/s/ Lynette Rogers, RN

Addendum Z, attach. 21-"a"

SUGGESTION (Taken from rough notes) After assuring Mrs Cramer, Superviros/Coordinator that I will think of something as an alternative for resolving the problem of missing identa-bands.

Ward 2B2.

PROBLEM:

Patients in Bldg. 2 frequjently have identa-bands missing. The main probable reason is that patients remove them themselves because ofthe following reasons:

1) Many of the patients areunrreliable, therefore, the identa-band is of no significance to them.

2) Some of the patients attend social functions, therefore, the identa-bank has apparent negative connotations.

3) Some patients go home on pass, their statusas patients accompanies them because of the attached identa-band.

SOLUTION:

Since patients in Bldg. 2 are generally not suicidal, a suggestion is made that male patients be permitted to wear "dog tag" identifications.

Advantages are as follows:

1) They can be concealed under shirts for occasions that do not require patient identification.

2) They can be more acceptable to male patients since they are familiar with their significance during service days.

3) The will preclude additional secretarial or nurse time by frequent reapplications because of deterioration of illegibility due to long-term use.

4) Only one tag should be necessary at time of admission or transfer to Bldg. 2.

5) They could be adjusted to fit neck.

EMPLOYEE SERVICE STATEMENT
(See information on reverse)

1. NAME (Caps) Last-First-Middle
ROGERS, LYNETTE GERTRUDE MRS.
2. BIRTH DATE (Mo.,Day,Yr.)
5-19-22
3. SOCIAL SECURITY NO.
549-62-6833
4. STATEMENT NO
1
5. SERVICE SUMMARY
A. PREVIOUS CIVILIAN SERVICE
NONE
B. SERVICE PERFORMED IN THIS AGENCY
FROM: 4-15-68 TO: 11-8-75
SERVICE: 7 YRS 6 MOS 24 DAYS
CIVIL SERVICE RETIREMENT DEDUCTIONS:
YES (indicated by X)
C. MILITARY SERVICE:
NONE
D. ACCUMULATE ALL SERVICE AND ENTER
TOTAL SERVICE HERE: 7 YRS 6 MOS 24
DAYS
6. COMPLETE THIS ITEM ONLY FOR EMPLOYEES SEPARATING FROM POSITIONS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM - YOUR RETIREMENT BENEFIT, BASED ON THE ABOVE SEPARATION, IS INDICATED BELOW:
LUMP SUM REFUND ONLY (is indicated by XX)
7. REMARKS CONCERNING SERVICE ENTRIES ABOVE:
None entered.
8. SIGNATURE OF EMPLOYEE - DATE
(typed) LYNETTE G. ROGERS - no date
9. SIGNATURE OF AGENCY OFFICIAL - DATE
/s/ Wm L. Hicks 11-6-75
10. TITLE OF AGENCY OFFICIAL
VAH Chief, Personnel Service
11. AGENCY NAME, INCLUDING BUREAU AND DIVISION AND ADDRESS
Veterans Administration Hospital
3801 Miranda Ave.
Palo Alto, CA 94304

INSTRUCTIONS FOR EMPLOYING OFFICES

Complete this form upon separation (and conversion to or from an appointment under the Civil Service Retirement System) to provide a cumulative record of creditable service for Civil Service retirement.

Items 1-3 Must agree with SF-50.

Item 4 Number statements in consecutive order.

Item 5 Use FPM Supp. 83101, Retirement, S-3, Creditable Service, to determine the length and creditability of periods of service. All entries are to reflect verified service documented in the employee's Official Personnel Folder (OPF). If the previous civilian service or military service sections do not apply to the employee, enter "none", do not leave blank.

Item 6 Complete only for separations and conversions from positions subject to Civil Service retirement deductions, checking the appropriate box as follows; (*Only one box is to be checked*).

None - Check if the employee transfers to another position subject to the Civil Service Retirement System.

Refund Only - Check if the employee fails to meet either of the two general requirements for retirement upon separation: (A) 5 years total civilian service and (B) at least one year of service subject to the Civil service Retirement System in the two year period preceding the separation (*"one of two" rule*)

Deferred Annuity or Refund - Check if the employee, at separation, meets both of the general requirements for retirement but does not meet any of the sets of conditions for immediate annuity opposite.

Immediate Annuity - Check if, at separation, the employee meets both of the general requirements and any of the sets of conditions for immediate annuity shown opposite. (See below)

Minimum Age	Minimum Service (Years)	Special Requirements
62	5	None
60	20	None
55	30	None
Any age	25	Separation must be involuntary without cause or during a major reduction in force as determined by the Civil Service Commission.
50	20	
Any age	5	Total disability; "one of two" rule, above, does not apply.

Item 7 - Explain any difference between the amount of creditable service entered for a period of service and the calendar time represented by the "From" and "To" dates entered for the same period, i.e. Excess LWOP, Intermittent Service, or "Time Lost" during military service. Also use this section to clarify any other entries on the form. For example, if the employee had two periods of military service enter "See Remarks" and the amount of total military service in section 5C and enter the dates of military service under Remarks.

Item 8 - The employee is to review and sign the forms during the exit interview or at some other convenient time prior to actual separation. If the employee's signature is not obtained before actual separation, the employee and OPF copies of the form are to be forwarded to the employee for signature. The control copy is to be filed on the right-hand side of the employee's OPF. The material sent to the employee is to include a letter of transmittal which instructs the employee to sign and return the OPF copy and a franked envelope with the agency's return address. If the employee fails to return

the OPF copy, the control copy will be retained in the personnel folder. If the OPF copy is returned or if the employee's signature is obtained before separation, the control copy may be discarded.

Items 9-11 - The completed forms are to be signed by an authorized agency personnel official, including title, agency name, bureau, division, and mailing address.

NOTE: A current copy of this form is to be filed on the right-hand side of the employee's Official Personnel Folder whenever the folder is transferred between agencies or from an agency to the Federal Records center, regardless of nature of agency, type of appointment, or reason for separation.

REQUEST FOR PERSONNEL ACTION

1. No entry
2. Date of request
   10/31/75
3. (unreadable)
4. Social Security No.
   549626833
5. Name Code
   ROG
6. Day No.
   312
7. Effective Date
   11/8/75
8. Trans. Type
   14 | 17
9. (unreadable)
10. No entry
11. No entry
12. Nature of Action
    Re ?? (crossed through)
    Discharge (crossed through)
    Termination
13. Civil Service or other Legal Authority
    No entry
14. Employee Name
    Rogers, Lynette G. Mrs.

15 through 29 - No entries.

30. TERMINATION is entered.
31. Position
    From LWOP
32. Proposed Effective Date
    11/8/75
33. No entry
34. Position
    (STAFF NURSE)
35. Pay Plan
    VN
36. Occup Code
    0610(81)
37. Gr & Step or Rate
    Intermediate/1
38. Salary
    $16,255
39. Location of Employing Office
    Hospital Patient Care Services, Nursing Service, Palo Alto, Calif.
90. Signed by: Helen F. Hennessy
    Title: R.N., Chief, Nursing Service
    contact for Additional information:

Addendum Z, attach. 23

REQUEST FOR PERSONNEL ACTION

1. No entry
2. Date of request
   10/31/75
3. (unreadable)
4. Social Security No.
   549626833
5. Name Code
   ROG
6. Day No.
   312
7. Effective Date
   11/8/75
8. Trans. Type
   14 | 17
9. (unreadable)
10. No entry
11. No entry
12. Nature of Action
   Re ?? (crossed through)
   Discharge (crossed through)
   Termination
13. Civil Service or other Legal Authority
   No entry
14. Employee Name
   Rogers, Lynette G. Mrs.

15 through 29 - No entries.

30. TERMINATION is entered.
31. Position
   From LWOP
32. Proposed Effective Date
   11/8/75
33. No entry
34. Position
   (STAFF NURSE)
35. Pay Plan
   VN
36. Occup Code
   0610(81)
37. Gr & Step or Rate
   Intermediate/1
38. Salary
   $16,255
39. Location of Employing Office
   Hospital Patient Care Services, Nursing Service, Palo Alto, Calif.
90. Signed by: Helen F. Hennessy
   Title: R.N., Chief, Nursing Service
   contact for Additional information:

Addendum Z, attach. 23

J. Pearson, Administrative Officer
mb/5540

92. Authorizing Signature and Title
Wm L. Hicks, Date: 11/6/75

93. Employee Name
ROGERS, LYNETTE G.

94. Station No.
5024

95. Social Security No.
549626833

96. Name Code
ROG

98. Trans Type
22

99. Nature of Action
352

113. Separation Data
- charges of professional misconduct

114. Remarks
Terminated as directed by letter dated 10/17/75 from the Chief Medical Director for various charges relating to professional misconduct.

NOTIFICATION OF PERSONNEL ACTION

1. NAME, LAST-FIRST-INITIAL
   ROGERS, LYNETTE G MRS.
2. STATION NO.
   5024
3. BIRTH DATE
   05-19-22
4. SOCIAL SECURITY NO.
   549-62-6833
5. Veteran PREFERENCE
   1 (indicating "no")
6. TENURE GROUP
   1
7. SERVICE COMP. DATE
   unreadable
8. HANDICAP CODE
   (copy missing this section)
9. FEGLI
   (copy missing this section)
10. RETIREMENT
    1 (indicating "CS"
11. (For CSC use)
    N/A
12. CODE S.C. NATURE OF ACTION
    (missing) Termination
13. EFF. DATE
    11-06-75
14. N/A (no entry)
15. FROM-POSITION TITLE AND NO.
    Staff Nurse
    Staff
16. PAY PL. OCCUP. CODE
    VN 0610 /81/
17. GRADE OR LEVEL
    Interim
    STEP RATE
    1
18. SALARY
    $16,255
19. NAME AND LOCATION OF EMPLOYING OFFICE
    VAH PROF SVCS NURSING SERVICE
    Palo Alto, Calif
20-24
    (No entries)
25-29 unreadable
30. REMARKS
    FOR SEPARATION - Terminated as directed by letter dated 10-17-75 from the

Addendum Z, attach. 24

Chief Director for various charges relating to professional misconduct. COMPLETED AND COPY PROVIDED TO EMPLOYEE. 11-6-75

31-33 No entries.
34. Signature
/s/ Wm T Hicks
PERSONNEL OFFICER

35. Date: 05-13-74

Addendum Z, attach. 24

NOTIFICATION OF PERSONNEL ACTION

1. NAME, LAST-FIRST-INITIAL
   ROGERS, LYNETTE G MRS.
2. STATION NO.
   5024
3. BIRTH DATE
   05-19-22
4. SOCIAL SECURITY NO.
   549-62-6833
5. Veteran PREFERENCE
   1 (indicating "no")
6. TENURE GROUP
   1
7. SERVICE COMP. DATE
   unreadable
8. HANDICAP CODE
   (copy missing this section)
9. FEGLI
   (copy missing this section)
10. RETIREMENT
    1 (indicating "CS"
11. (For CSC use)
    N/A
12. CODE S.C. NATURE OF ACTION
    (missing) Termination
13. EFF. DATE
    05-13-75
14. N/A (no entry)
15. FROM-POSITION TITLE AND NO.
    Nurse
    /Staff Nurse/
16. PAY PL. OCCUP. CODE
    VN 0610 /81/
17. GRADE OR LEVEL
    Interm
    STEP RATE
    1
18. SALARY
    $14,671
19. NAME AND LOCATION OF EMPLOYING OFFICE
    VAH PROF SVCS NURSING SERVICE
    Palo Alto, Calif
20-24 No Entries made
25. DUTY STATION (City and State)
    Palo Alto, CA
26. LOCATION CODE
    06-2660-085
27. APPROPRIATION
    8251.2130

Addendum Z, attach. 25

28. POSITION OCCUPIED
2 (Excepted Service)
29. No Entry
30-33 No Entries made
34. SIGNATURE and TITLE
/s/ Carl P. Hollenhorst,
Personnel Officer
35. DATE
05-13-74

BOARD ACTION

1. NAME OF BOARD
   Nurse Prof. Std. Bd.
2. NAME OF APPLICANT/EMPLOYEE, GRADE AND SALARY
   ROGERS, Lynette G. (Mrs.)
   Grade: Full/3 $9026
3. STATION OF BOARD
   VAH, Palo Alto, California
4. TIME OF MEETING
   11:00 AM
5. DATE
   10/1/68
6. STATION OF EMPLOYEE AND POSITION OR HOME ADDRESS OF APPLICANT
   VAH, Palo Alto, California
   Position: Staff Nurse (PAD)
7. AUTHORIZATION FOR BOARD
   DM&S Supplement MP-5 Part II
   Chapter 2
8. FINDINGS
   Applicant meets the basic requirements for appointment at Full Grade. Applicant is 46 years of age. Date of Birth: 5/19/22. Place of Birth: Calcutta, Bengal, India. U.S. Citizen.

   Pre-professional Education - High School Graduate

   Professional Education - Graduate of Medical College Hospital School of Nursing, Calcutta, India. Date: 1943, Diploma.

   San Jose State College, San Jose, California, 1967. B.S.N. and P.H.N. (NLN accredited)

   License - California #133877, expires 6/30/69
   Military Service - None
   Professional Experience - *7 years, 4 months applicable experience

*1/43 - 2/44 Staff Nurse, Medical College Hospital, Calcutta, Bengal, India

Addendum Z, attach. 26

2/44 - 4/45 Private Duty, Bengal, India
*3/59 - 8/60 Staff Nurse, Queensway General Hospital, Toronto, Ontario, Canada
*2/61 - 6/61 Staff Nurse, Sequoia Hospital, Redwood City, California
*10/61 - 8/63 Staff Nurse, El Camino Hospital, Mt. View, California
*1/64 - 8/64 Staff Nurse, El Camino Hospital, Mt. View, California
*6/65 - 9/65 Staff Nurse, Kaiser Foundation Hospital, Santa Clara, California
*6/66 - 9/66 Staff Nurse, Kaiser Foundation Hospital, Santa Clara, California
*2/67 - 9/67 Head Nurse, Kaiser Foundation Hospital, San Francisco, California
*9/67 - 3/68 Supervisor, Kaiser Foundation Hospital, San Francisco, California
*4/68 - Present Staff Nurse, VAH, Palo Alto, California

References - (1) Satisfactory, 1 guarded, 1 poor
Interview - 1st Assistant Chief, Nursing Service - Satisfactory

VA form 10-2543

BOARD OF MEDICAL QUALITY ASSURANCE
1430 Howe Avenue,
Sacramento, California 95825
(916)924-2338

May 15, 1991

TO WHOM IT MAY CONCERN:
I, TERRESA A. CIAU, Program Manager, Division of Licensing, and Official Custodian of the Licensing records of the Medical Board of California, do hereby certify that a search of the records for the past 15 years, has been made on this date and there is no indication that ERNST BURIAN has ever been licensed as a physician and surgeon.

The current record also reflects that subject has not been issued any other type of certificate or license by the Medical Board of California.

Respectfully submitted,
/s/ Terresa A. Ciau
Program Manager
Division of Licensing

SECTION 162 OF THE BUSINESS AND PROFESSIONS CODE: The certificate of the officer in charge of the records of any board in the department that any person was or was not on a specified date, or during a specified period of time, licensed, certified or registered under the provisions of law administered by the Board, or that the license, certificate or registration of any person was revoked or under suspension, shall be admitted in any court as prima facie evidence of the facts therein recited.

Harder & Associates
Edward S. Piggins, President
160 Main Street, Suite #6
Los Altos, California 94022
Telephone (415)941-5441
A Professional Private Investigative
Organization
Cal. State Lic. Pl-11428

To Whom It May Concern:

I, Edward S. Piggins, hereby declare that I gave Lynette Rogers a document dated May 15, 1991 from Terresa A. Ciau, the Program Manager for the division of licensing at the Board of Medical Quality Assurance of California. This document was given to Lynette Rogers during the week of May 19, 1991.

/s/ Edward s. Piggins Jr.
April 24, 1992
STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA) ss.
Subscribed and sworn to before me this 24th day of April, 1992.
/s/ Ruth Tubbs, Notary Public
My commission expires 10/8/95

(Official Seal)

DISCRETIONARY HEARING
---oOo---

VA HOSPITAL,
Respondent,
v
LYNETTE ROGERS,
Appellant.

Veterans Administration Hospital
Rm. 241B, Building #6
Palo Alto, Ca. 94304

Taken before NAGOSTER L. FRANKS,
a Notary Public
In and for the County of Alameda
State of California
JUNE 19, 1975
---oOo---
VOLUME II - pgs. 231-382

Afternoon Session, June 19, 1975

I N D E X

WITNESSES:

1.	Dr. Ernest Burian	
	Neal	321
	Weinberg	327
	Miss Freeman	329
	Mrs. Humes	330
2.	Junne Cramer	
	Neal	330, 369
	Weinberg	352
	Mrs. Humes	364

EXHIBITS

On behalf of the Agency

12	7 pages, memorandum dated January 4, 1973 addressed to Chief, Nursing service, from Dr. Burian.	325
13	Sections of Summary of Counseling prepared by Mrs. Cramer and addressed to the Chief, Nursing Service, dated 12/22/72	378

322

Well, the Head Nurse assists me and goes with me to inform me of any incidents or any complication or any problems which might have arisen during the night or the day before.

Then I will write orders. The orders are usually written once a month, but there is a great need for changing orders on a daily basis, because new problems arise and so I will re-write orders to increase medication, cancel medications and do al of these things.

Furthermore, laboratory services, X-ray services have to be requested by me which I write on the orders. And then, of course, I do regular physical examination for all my patients, particularly if there is a complicated medical problem that requires great attention.

I guess that about covers it.

Q. Thank you Doctor. Now, let me ask you if one of your patients was a Doctor Orlo Pacciuli?

A. Yah, he was one of my patients.

Q. Can you approximate about how long Dr. Peculia was under your care?

A. I can only guess. I think about a year and a half or maybe two years. I think maybe two years he was under my care.

Q. All right. Now, I am going to call your attention to the month of December, the date of december 31, '72. Were you on duty on that day?

A. Yes.

Q. On the 31st of December?

A. Yes.

(Testimony of Dr. Ernst Burian)

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D.C.
September 26, 1966

Lynette Rogers, R.N.
624 Cornelia Ct.
Mountain View, California

Dear Mrs. Rogers:

Enclosed is a copy of my recent speech in the House of Representatives regarding your profession. It contains a summary of federal programs concerning nursing which I hope you will find useful.

The national shortage of professional nurses becomes more critical each day. Something must be done to attract more young men and women into the profession and to provide training.

The most obvious step is to bring nurses' salaries to a level commensurate with their training and responsibility. But you can do much to encourage young people to pursue a nursing career. It is hoped that the information in this speech will be of assistance to you in counseling them.

In closing, let me express my personal appreciation for the humanitarian service you render as a Registered Nurse.

Yours Sincerely,
/s/ Charles S. Gubser
Member of Congress

CSG/dc
Encl.

Addendum Z, attach. 29

SAN JOSE STATE COLLEGE
San Jose 14, California
February 12, 1962

Mrs. Lynette Rogers
624 Cornelia Court
Mountain View, California

Dear Mrs. Rogers:

We are enclosing a copy of our Bachelor of Science degree program which includes information for graduates of diploma schools who wish to receive the B.S. degree in nursing. We are asking the Admissions Office to send you a bulletin and an application blank.

Each year a few Federal traineeships are made available to this school. They are granted to registered nurses who have completed all requirements for the degree up to the two semesters of the senior year which must be taken full time in residency. The traineeships provide for board, room and fees for this final year.

Registered nurses who are interested should complete the application for scholarship. The traineeships are granted after careful evaluation of the nurse's ability and the reason for her interest in securing further education, and are then passed on by a committee of the faculty.

Graduates of this program receive a B.S. degree in Nursing and are eligible to apply to the State for a Public Health Nursing Certificate.

If you have further questions after receiving this information, please feel free to write us again.

Sincerely,
/s/Grace E.M. Staple
Grace E. M. Staple, R.N.
Head, Department of Nursing

GEMS:mep
Encls.
Addendum Z, attach 30

DEPARTMENT OF HEALTH, EDUCATION,AND WELFARE
Public Health Service
800 N. Quincy Street
Arlington, Virginia 22203

Dear Trainee:

The professional Nurse Traineeship Program, under which you are now receiving funds for full-time study, began in 1956 because of a critical situation in nursing - the shortage of qualified administrators, supervisors and teachers. Nursing leaders and members of Congress believed that the key to the improvement of patient care lay in alleviating this shortage, and that the best way to do this was to make it possible for more nurses to get advanced preparation in these fields.

The traineeship program as originally authorized by Congress was extended for five years by the Nurse Training Act of 1964 and was expanded to include the preparation of Professional Nurse Specialists. A traineeship is an award rather than a loan, it does not need to be paid back to the Federal government. It is granted on the basis of the student's academic and personal qualifications and sincere interest in improving her administrative, supervisory, teaching or nursing specialty skills. A traineeship is, in effect, the Federal government's investment in the future good health of the nation.

There are a number of responsibilities that you assume when you accept a traineeship. The most important of these is to take a position in the field for which you are preparing as soon as possible after completion of your traineeship. You should always keep in mind, when planning your

career in nursing, that the reason you received these funds was to increase your skills and knowledge to help meet the critical need for prepared administrators, supervisors, teachers, and nurse specialists in order to improve all types of nursing services.

We ask that you provide certain information about yourself. When you start on a traineeship, a Notice of Appointment is filed with us, giving data on your education and experience. This will be followed, from time to time, by requests from us for additional information regarding your activities after you have finished your educational experience. What you tell us about your employment, and any comments you have, will be most valuable to us in bringing to members of Congress, other nurses, and the public the story of the traineeship program and what it has done.

Finally, we ask you to keep us informed of changes in name and address for two years following completion of your traineeship, so that we will know where to send our follow-up questionnaires. You can do this by sending a letter or postcard to Training Grants Section, Division of Nursing, U. S. Public Health Service, department of Health, Education and Welfare, 800 North Quincy Street, Arlington, Virginia 22203, giving <u>your name</u> at the time you received the traineeship, <u>name of the school</u>, the <u>date of the award</u>, and the <u>appropriate changes</u> to be made in our records.

If you are like our trainees in the past, I know you will return to work stimulated by your educational experience, with fresh ideas and new skills.

Congratulations and best wishes for success now and in the future.

Sincerely yours,
/s/ Jessie M. Scott
Jessie M. Scott
Chief
Division of Nursing

Addendum Z, attach. 31

15927 SAN JOSE STATE COLLEGE Lynette Rogers

NAME

B.S. NURSING CHECK LIST OF COURSES

Course No. Title	Units	Grade
FRESHMAN YEAR - Fall Semester		
Nurs. 10A - Hist. & Survey of Nsg. Profession (open to all)	1	CREDIT
Engl. 1A - Composition	3	
Chem. 1A - General Chemistry	5	_____
American History	3	_____
Psych. 5 or 55 - General Psych	3	_____
P.E. - Physical Education	½	_____
TOTAL - Units & GPA	15½	_____
		_____
Spring Semester		
Nurs. 10B - Hist. & Survey of Nsg. Profession	1	CREDIT
Speech 2A - Public Speaking	3	
Chem. 30B - Organic Chemistry	3	_____
Bact. 50 - General Bact.	5	_____
Soc. 1 or 2 - Anthropology	3	_____
P.E. -(Body Mechanics)	½	_____
TOTAL - Units & GPA	15½	_____
		_____
SOPHOMORE YEAR - Fall Semester		
Nurs. 30A - Intro. to Nsg.	5	CREDIT
A&P 65A - Human Anatomy	3	
H.E. 109 - Family Nutrition	3	_____
Government	3	_____
H.E. 70 - Child Development	3	_____
P.E. - Physical Education	½	_____
TOTAL - Units & GPA	17½	_____
		_____
Spring Semester		
Nurs. 30B - Intro. to Nsg.	5	CREDIT
A&P 65B - Human Physiology	5	
Apprec. or History of Music, Drama or Art	3	_____
Soc. 70 or 60	3	_____
P.E. - Physical Education	½	_____
TOTAL - Units & GPA	16½	_____
		_____
JUNIOR YEAR - Fall Semester		
Nurs. 130A - Nsg. of Adults and Children	10	CREDIT
Literature - Upper Division	3	_____
Philosophy - Upper Division	3	_____
TOTAL - Units & GPA	16	_____

Addendum Z, attach. 32

Spring Semester

Nurs. 130B - Nsg. of Adults and Children	10	CREDIT
Psych. 110 - Abnormal Psych.	3	_____
Elective - Upper Division	4	_____
TOTAL - Units & GPA	17	_____

SENIOR YEAR - Fall Semester

Nurs. 170 - Community Health	6	_____
Nurs. 172 - Family Nsg.	4	_____
H.H. 150 - Public Health Admin	3	_____
Elective - Upper Division	4	_____
TOTAL - Units & GPA	17	_____

Spring Semester

Nurs. 174 - Advanced Nsg.	6	_____
Nurs. 176 - Psychiatric Nsg.	6	_____
Nurs. 190 - Senior Seminar	2	_____
Elective - Upper Division	3	_____
TOTAL - Units & GPA	17	_____

ELECTIVES MAY BE CHOSEN FROM ANY UPPER DIVISION COURSES

Nursing majors should place emphasis on the social and behavioral sciences. Many should plan to go on to graduate school and, therefore, should elect a course in statistics; a foreign language is also sometimes required.

The history and political science requirement can be met by passing an examination. Nursing majors are urged to take this examination. If the test is not passed it is recommended that the student take:

a. Political Science 1A and History 170

or

b. History 171A and 171B

If the test is passed the student has an opportunity to take other upper division social science electives to meet the general education requirement and to strengthen their program. Be sure to see your adviser before registering for any courses.

3/15/63

624 Cornelia Court
Mt. View, CA 94040
March 12, 1979
(415)967-5426

CONFIDENTIAL

Dr. John W. Gilbaugh
19396 Monte Vista Drive
Saratoga, CA 95070

Dear Mr. Gilbaugh:

I apologize for this delay in seeking your professional opinion regarding a series of events which originated in the Nursing department of san Jose state University fourteen years ago.

My primary reason for this delay is because of my waiting for a statement from one of my former professional nurse colleagues who attended State with me between the years 1963 and 1967. This friend has knowledge of student conditions within the Nursing Department at S.J.S.U. Therefore, she is in a position to corroborate some of my reasons for filing a grievance with the Fairness Committee in 1966. However, since my friend is ill, I am proceeding without her statement in the interests of expediency.

My specific reason for seeking your assistance at this time concerns a report (copy enclosed) dated September 15, 1977, by Dr. Robert Burr, psychiatrist, of Sunnyvale, CA. In this report, Dr. burr's opinion is, that my "psychiatric problem" pre-dated my employment with the V.A. Hospital, Palo Alto. Specifically, Dr. Burr alleges that San Jose State is where this "psychiatric problem" began. Therefore, Sir, in your former administrative position as Dean of the College, I once again seek your assistance which you so generously proffered me in the past (copy of your letter dated August 15, 1966 is enclosed). This

grievance was satisfactorily resolved in my favor in 1967 as stated in the Executive Vice President, Dr. william J. Dusel's letter, dated July 3, 1967, (copy enclosed).

However, the repercussions of this problem have followed me for nearly fourteen years. My records show that I have lost two jobs since leaving State in 1967, because adverse reports, either verbally or in writing, were disseminated from past and/or present faculty members of the school of Nursing at S.J.S.U. Now, once again such reports of a so-called "psychiatric problem" are invidiously alleged by Dr. Burr, psychiatrist, directly to San Jose State University. Therefore, I am once again narrating my reasons for filing a grievance against certain members of the Nursing Faculty at S.J.S.U. It is relevant to add that neither the University nor I have any copies of this grievance after this period of time. A letter dated January 29, 1979, from the Assistant Dean, Donald M. DuShane to me, confirms this fact. Also, it is approp-riate to state emphatically that these problems were discussed by me both verbally and in writing with significant members of the Board of Nursing Educa-tion and Nurse Registration for the State of California, Sacramento, CA. I was advised by Mr. Michael R. Buggy, R.N., Executive Secretary, that such matters are left to the institution of learning for resolution through their administrative process. Dr. Dusel's letter confirms that this procedure was indeed followed.

More importantly, I reiterate, that I did not file this grievance for personal gain or vindictiveness. My primary reason for filing this grievance resulted from concern, and after I was informed that a student heard certain members of the Nursing Faculty

collaborating to drop me from the Nursing Program. Moreover, I was totally unsophisticated about the behavior of some persons in American institutions because of my foreign cultural back-ground. (I was born and raised in India of Spanish-English descent).

Truthfully, Sir, I was also afraid in 1963, shortly after submitting my application for acceptance to the college, that I would not be permitted to work in America as a "professional nurse." The fact that I filed a griev-ance in 1966 was my attempt to have designated and responsible members of the administrative body of the college monitor the Nursing School's decisions. Therefore, if certain members of the Nursing Faculty wanted to drop me just prior to completion of the Nursing Program in the Fall of 1966, academ-ically this decision was theirs providing they did not resort to arbitrary and capricious actions. However, if, as stated by Dr. Dusel in this letter, I asked too many "...persistent and embarrassing questions," I can only assert again, I was naive because of my sheltered background. The first experience of which I speak is an example of when I asked embarrassing questions. However, this experience was not the cause of my filing a grievance, but I list it here as a priority since Dr. burr makes specific reference to it in his report. Therefore, I will narrate this incident as follows to the best of my knowledge. The corresponding enclosures support my statements where necessary.

The college received Federal funds from the Department of Health, Education and Welfare for nurses through the Professional Nurse Traineeship Program. Diploma-trained registered nurses from previous nursing schools without a Baccalaureate program, were eligible for federal funds if they

qualified. For their previous training, generally three years in nursing schools, the nursing faculty designated thirty-two (32) units of credit which can be earned by taking challenge tests. These tests were to be taken in the junior year and all that was required was to get a satisfactory score or plus (+), as confirmed by E. Pranclosh, R.N. in her statement dated January 15, 1979. My experiences with these tests were as follows:

First, in the fall of 1965, I petitioned the Acting Dean of Nursing, Mrs. H. Stevens, R.N., for a deferral due to reasons of ill-health resembling a climateric. I was crying. (I had an abdominal hysterectomy in August 1964, at Stanford University Hospital). I was not only denied this request, but I was verbally cautioned that if I did not take these tests at this time I would be denied admission into the Nursing Program in January 1966. Furthermore, I was required to sit all thirty-two units of tests at one time (underscore supplied). The copy enclosure of Form 1E23, which specifies "Outline of work leading to fulfillment of require-ments..." is signed by Mrs. H. Stevens on June 9, 1966, and states that these required challenge tests have been completed by me. However, on my transcript for 1966 (copy enclosed) these tests are distributed by implying that I took them at different times which is impossible, since Mrs. H. Stevens signed Form 1E23 in June, 1966 and prior to completion of the fall semester 1966. However, Nursing 10AB appears on the transcript in the fall semester, 1966.

Second, I was sent by Mrs. Stevens to see the professor, Mrs. Dufour, who constructed the "teacher-made" challenge test for "assistance" in the areas of nursing covered

in the test since, because of my foreign-trained background in India, I had no knowledge of which areas of nursing the American nurses covered in their training (copy of verification of my training in India enclosed). Mrs. Dufour informed me that she "loaned" her only copy of the test I would be taking to a student to study from. (I can recall the nurse in question). For some reason unknown to me, this student had already been accepted into U.C. San Francisco, but had not taken these challenge tests. This professor instructed me to sit down and listen to answers from previous tests she uses. I followed orders and took the test (all 32 units) the next morning. However, since I recognized some of the same answers from a total of approximately two hundred (200) questions, I returned to see the professor and questioned her method of "assisting" students. Her reply in effect was: "I am old-fashioned; I shouldn't look a gift horse in the mouth; it is accepted practice if we are going to get our students into U.C." I next went to see my counselor and complained that I was not in favor of this practice since this was cheating. Moreover, in my opinion, I was tested unfairly because I was denied the time to study this material. I petitioned my counselor to be given the opportunity to study the material when my health improved, since it was important that I gain all the knowledge I can since my desire was to prepare myself more proficient to nurse patients in a new country (I emigrated to America in 1960). My petitions and complaints went unheeded. Therefore, after I filed a grievance resulting from the first incident in the course Nursing 172, "Family Nursing L&L," the Nursing Faculty changed the rules from those prescribed by the college, and arbitrarily assigned me letter

grades on the challenge test.

Specifically, my reasons for filing a grievance resulted from the unusually severe penalty by Mrs. H. Stevens, in the course Nursing 172. This grievance covered three areas:

First:

I was assigned a letter grade of "F" by Mrs. H. Stevens on my paper, titled: "Image in Three Perspectives." I do not recall why the paper displeased this professor, since it focused on the subject matter relevant to the course. Moreover, I was advised by Mrs. L. Taylor Henderson, Associate Professor of the Writing Center, as to how to proceed with the paper.

Second:

In this same course, Mrs. H. Stevens asked students to discuss the results of a multiple-choice test. I participated eagerly, but I disagreed on a few of the "correct" answers as determined by Mrs. Stevens since they differed from factual statements made by authors of Obstetrics' texts. Mrs. Stevens was inflexible by refusing to accept even the basic fundamental concepts of fairness in considering my responses for partial credit. In view of my being assigned an "F" on my paper, every point in my favor was of value if I was to pass this course and complete the Nursing Program at the end of this semester.

Third:

While in the clinical area for this course, I was requested by Mrs. Stevens not to participate since the younger students in the generic nursing program required the experience in the delivery Room of Kaiser Hospital, Santa Clara. Nevertheless, Mrs. Stevens assigned me an overall letter grade of "C" from this course.

Therefore, Sir, I respectfully request a written statement from you since you had

knowledge of the Nursing Department in your administrative capacity in the mid-sixties. I cannot expect to make a new beginning in nursing in the institution of any hospital on the peninsula. This problem has followed me for nearly fourteen years. In the V.A. Hospital, Palo alto, I was labelled a "trouble-maker" because of my experiences at San Jose State. I need to work in America. I owe it to my family, myself, and the people of this country when I elected to become one of its citizens in 1966.

I would be most grateful Sir, if you will return all copies of the materials enclosed in this package since they pertain to matters of confidentiality in Dr. Burr's report. I am enclosing the necessary postage stamps to defer the costs incurred in your reply by Certified Mail.

Thank you for your consideration in this matter.

Sincerely,
/s/ Mrs. Lynette Rogers

MOTION NO. 2
DECLARATION "C"

TO WHOM IT MAY CONCERN
I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts, that:

2. I wrote a letter to Dr. John W. Gilbaugh dated March 12, 1979, alleging my experiences in my student years in the Department of Nursing, San Jose State University which led to my filing a grievance.

3. Mrs. H. Stevens, RN, Acting Head of the Nursing Department did assign me a letter grade of F in large and heavy red ink on a paper I wrote for her class without informing me why I warranted this grade. She also assigned me the letter grade of C, even though I was asked by her not to participate in the clinical program of Family Nursing, Nursing 172.

4. I was informed by the then presiding student body president, that it was openly planned by Mrs. H. Stevens, RN, and her associate instructors, to drop me from the nursing program in my senior year.

5. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, plaintiff *pro se*

San Jose State College
San Jose, California 95114
Office of the Dean of the College
August 15, 1966

Mrs. Lynette G. Rogers
624 Cornelia Court
Mountain View, California

Dear Mrs. Rogers:

We are sorry to hear of your difficulties during your studies in the Nursing Department. Our office is always interested in the maintenance of good student-faculty relations and, most importantly, the individual student's successful completion of a program at San Jose State College.

In response to your letter of July 30th, we are requesting reports from the Sciences and Applied Arts Division dean and the Nursing Department Chairman. We trust that this action will result in an equitable review of the problems you discuss in your letter.

Sincerely yours,
/s/ John W. Gilbaugh

JWG:lb
Enclosures: (7)

Professional Nurse
TRAINEESHIP PROGRAM

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

NURSE TRAINING ACT OF 1964
(Public Law 88-581)

The Nurse Training Act of 1964 continues and expands the Professional Nurse Traineeship Program, which was established in 1956. The other provisions of the Nurse Training Act are listed below.

- *Construction Grants* for facilities in new collegiate, associate degree and diploma schools of nursing, for expansion of the training capacity of existing facilities, and for renovation or replacement of existing facilities.
- *Project Grants for Improvement in Nurse Training* to diploma, collegiate, and associate degree schools of nursing for projects which will improve, strengthen, or expand teaching programs.
- *Payments to Diploma Schools of Nursing* to defray a portion of the costs of training students of nursing whose enrollment can reasonably be attributed to the provisions of the Act.
- *Loans to Student Nurses* to increase the number of nurses by helping them defray the costs of their nursing education, and to encourage them to stay in active practice by a partial cancellation clause based on years of employment as professional nurses.

For further information on the Nurse Training act write to the Division of Nursing, Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C., 20201.

Purpose

To increase the number of graduate nurses with preparation for positions as administrators, supervisors, nursing specialists, and teachers in hospitals and related institutions, public health agencies, and schools of nursing.

TRAINEESHIPS FOR FULL-TIME ACADEMIC STUDY

These traineeships are available for *full-time study only* and may be awarded to nurses enrolled in nursing programs designed for the preparation of administrators, supervisors, teachers, and nursing specialists at the post-baccalaureate, and post-master's level; and to nurses enrolled in baccalaureate programs in nursing which contain elements of administration, supervision, and teaching.

TRAINEESHIP PROVISIONS

- Tuition and fees as established by the school.
- A monthly stipend, paid during the period of study, of $200 for trainees at the baccalaureate level, $250 for trainees at the post-baccalaureate level, and $300 for trainees at the post-master's level.
- Travel to the training institution, *one from* home or place of last employment at the rate of 6 cents a mile, *once* if a temporary change of residence is necessary; travel to and from field practice centers. (Travel to home or place of employment after completion of traineeship is not covered.)
- Allowance for legal dependents (as defined for income tax purposes) of $30 each per month, paid during the period of study.

A full-time academic traineeship may be awarded—

- for a maximum of 24 months of traineeship aid (whether in one or more schools or

levels of study), of which not more than 12 months may be at the baccalaureate

level, not more than 18 months at the post-baccalaureate level, and not more than 12 months at the post-master's level;

- for summer session study, but only if such study enables the student to complete a program, or if such study is part of a continuing program.

ELIGIBILITY

Trainees are selected by the institution in accordance with the admission policies of the school and the purposes of the traineeship program. A candidate shall—

- be a graduate of a State-approved school of nursing and be licensed as a professional nurse in a State or possession of the United States;
- be a citizen of the United States or have been lawfully admitted to the United States for permanent residence;
- qualify in terms of academic standing, personal qualifications, and financial need;
- be able to enroll full time in a course of study.

A candidate enrolled in a baccalaureate program in nursing shall—

- have had experience in or be committed to a position as a teacher, administrator, supervisor, or nurse in charge of a nursing unit on any tour of duty and in any field of nursing in which she has responsibility for other nursing personnel;
- preferably be able to complete the program of study on a full-time basis in 12 consecutive months or less;
- maintain an academic standing that will qualify for graduate study at a later date.

A candidate enrolled in a professional nursing specialty program shall—

- have completed fa baccalaureate program

in nursing;

- be preparing to provide direct nursing care of patients in the specialty area.

APPLICATION PROCEDURE

Write to the institution providing the training. All traineeships are awarded to students by the institution, and requests for application forms and for further information should be directed to the institution of choice. Schools of nursing and public health participating in the Professional Nurse Traineeship Program are listed in Supplement A. These traineeships are awarded for study only in those short-term courses which have been approved by the Division of Nursing for participation in the Professional Nurse Traineeship Program.

TRAINEESHIP PROVISIONS

- Tuition and fees as established by the sponsoring agency.
- A daily stipend of $12 for trainees who must temporarily change their residence in order to enroll in the course.

ELIGIBILITY

Short-term traineeships are awarded by the agency sponsoring the training course in accordance with its admission policies and the requirements listed below.

A nurse who has received 12 months of traineeship aid for long-term study under the Professional Nurse Traineeship Program is not eligible to receive a short-term traineeship. Where it is demonstrated that the training is necessary for a specific job situation, an exception may be made. A nurse may receive more than one short-term traineeship and remain eligible to apply for a long-term traineeship.

To be eligible a candidate shall be—

- a citizen of the United States or have been lawfully admitted to the United States for permanent residence;
- a graduate of a State-approved basic school of nursing;

- a professional nurse *currently* licensed in a State or possession of the United States;
- currently employed in a specialized clinical area or an administrative, supervisory, or teaching position in nursing or be committed to such position;
- released by her employer from regular employment in order to devote full time to study for the period of the course, and should be recommended by her employer for enrollment.

APPLICATION PROCEDURE

Write to the agency sponsoring the training course. All traineeships are awarded by such agencies, and requests for application forms and for information should be directed to the agency providing the appropriate course. Information about short-term courses approved for traineeships and about the agencies sponsoring the courses is issued three times a year by the Division of Nursing as Supplement B to this pamphlet.

U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Public Health Service
Division of Nursing
Washington, D.C. 20201

MOTION NO. 2
DECLARATION "D"

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in the above Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts, that:
2. I was the recipient of Federal funds under the Nurse Training Act of 1964 under the Department of Health, Education and Welfare.
3. My records show that on October 13, 1966, I received the sum of $172.50 by a payee copy of a check #29373. On November 2, 1966, I received the sum of $242.00 by a payee copy of check #29949; on December 6, 1966, I received the sum of $242.00 by a payee copy of check #30704; and on December 30, 1966, I received the sum of $181.50 by a payee copy of check #31336. [Attach. "a"].
4. I accepted this grant from HEW under the conditions established for the requirements by the Federal government. These were: "to meet the critical need for prepared administrators, supervisors, teachers, and nurse specialists in order to improve all types of nursing services." [See Ex. 31].
5. My VA records show that I was prevented from improving nursing service by my supervisors who "advised" me not to develop my staff. Matters relating to employees' absenteeism, sleeping on duty, and abuse of veterans was ignored.
6. In 1972-1973 I was also prevented, in Bldg. 2, from participating in patient programs. [Attach. "b"]. My daily assignments were mostly the duties of

nursing aides which entailed giving bed baths, changing diapers, and feeding bed-ridden veterans.

7. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, plaintiff *pro se*

SAN JOSE STATE COLLEGE
FOUNDATION
SAN JOSE STATE COLLEGE

COPY OF 4 PAYEE CHECKS
No. 29373 in the amount of $172.50,
No. 19949 in the amount of $242.00,
No. 31336 in the amount of $181.50, and
No. 30704 in the amount of $181.50; drawn on the Bank of America, Second and San Carlos Branch, and issued to:

Mrs. Lynette G. Rogers
624 Cornelia Court
Mountain View, California

under the Nurse Traineeship Grant - 1966; account #6053.66

9/27

Lyn Rogers -

At present there are 4 people involved in co-therapist training. Perhaps at a later time you could join in.

/s/ Priscilla Eberole

Addendum Z, attach. 37-"b"

State of California-Business and Commerce Agency
Ronald Reagan, Governor
Department of Professional and Vocational Standards
BOARD OF NURSING EDUCATION AND NURSE REGISTRATION
1021 O Street
Sacramento 95814

March 3, 1967

Mrs. Lynette G. Rogers:

Your confidential letter dated February 22, 1967 was received Friday, February 24, 1967.

The National League for Nursing was notified by telephone on Monday, February 27th, as well as the American Nurses Association, regarding the problem you have identified in your letter.

Please be advised that a meeting was held by representatives of the Board of Nursing Education and Nurse Registration and the Administrators of the Department of Nursing at San Jose State College and appropriate action has been taken.

Thank you for drawing this to my attention.

Sincerely yours,
BOARD OF NURSING EDUCATION AND NURSE REGISTRATION
/s/ Michael R. Buggy R.N.
(MR.) MICHAEL R. BUGGY, R.N.
Executive Secretary

MRB/tb

SAN JOSE STATE COLLEGE
125 South Seventh Street
San Jose, California 95114
Office of the Executive Vice President

July 3, 1967

Mrs. Lynette Rogers
624 Cornelia Court
Mountain View, California 94040

Dear Mrs. Rogers:

Thank you for your letter of June 29. With it you conclude, in typical frankness and insight, a lengthy appeal that you pursued throughout in a most proper and professional manner. I sincerely believe that the College as an institution, and consequently its students, will profit in time from your persistent and often embarrassing questioning.

I am glad that the final meeting with members of the Nursing faculty ended in a friendly handshake by all concerned, and I am pleased that you took the initiative in offering this expression of good will.

May I wish you success and satisfaction in all you undertake.

Sincerely yours,
/s/ Wm. J. Dusel
William J. Dusel

CC: President Robert Clark
Dr. Hobert Burns
Dr. William Winter

Addendum Z, attach. 39

Declaration E, Motion 2

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in the above Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts, that:

2. After I graduated from San Jose State University in 1967, I sought employment at Kaiser Hospital, Santa Clara. I was informed by the Director, M. Toohey, RN, that she did not have a permanent opening in Santa Clara, but there was an opening for a Head Nurse position in the Obstetrical department in San Francisco.

3. I applied for this position and was accepted by Mrs. Patricia Leonard, RN, Director of Nursing. I was shortly promoted to a position of Supervisor for the Obstetric Department.

4. In the summer of 1967, I was called into a meeting with Mrs. Leonard, RN, who proceeded to inquire of my student activities at San Jose State University. I informed Mrs. Leonard that this experience had nothing to do with my work at Kaiser. Mrs. Leonard, RN, replied that she did not want anyone working here fighting for what's "right" as there was too much already wrong at Kaiser. Mrs. Leonard requested me to find other employment as stated in my letter to the Administrator, Mr. D. Nesbit. [Attach. "a"].

5. On Friday, March 8, 1968, Mrs. Leonard, RN, stopped by on the Obstetric floor and asked me to see her before I started my commute home. Mrs. Leonard, RN, gave me the alternative of either being terminated or resigning. Since I

felt that a resignation would be an admission of some violation, I accepted the letter of termination. [Attach. "b"].

6. I next applied for employment at the VA Hospital, Palo Alto. I was interviewed by Helen Johnson, RN, 1st Assistant Chief. I informed her of this firing from Kaiser, and I was assured that it would not be a factor in my employment at the VA.

7. In good faith, I wrote a letter to the Chief of Personnel, requesting that he obtain information on my work at Kaiser Hospital, San Francisco.

8. I requested Dr. B. Nelson to submit a letter of reference on my behalf. This letter is submitted here and is testimony to the fact that I was complying with the terms of the Nurse Training Act of 1964. [Attach. "d"].

9. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, plaintiff *pro se*

624 Cornelia Court
Mountain View, California 94040
January 3, 1968

Dr. D. Nesbit Administrator
Kaiser Foundation Hospitals
San Francisco, California

Dear Sir:

On Friday December 22, Dr. H.B. Nelson mentioned that he wanted to speak to me regarding the series of misunderstandings that occurred between Mrs. P. Leonard and myself. Consequently, the following Tuesday morning at 9:30 a.m. Dr. Nelson and I were able to have a conference together. At this time, Dr. Nelson verbalized to me that it was not the impression he got from his interview with Mrs. Leonard that I was being dismissed from my position at Kaiser San Francisco. However, since the dismissal was not presented in the form of a letter (which I requested), may I please reiterate the three verbal specifications that were imposed upon me by Mrs. P. Leonard:

1. That I resign from Kaiser San Francisco, but at the same time I was to be allowed a period of six weeks to two months to find employment elsewhere.
2. If I mentioned a word of this to either a nurse or physician I would be dismissed immediately.
3. Either I was to leave or Mrs. P. Leonard would have to leave since she obviously felt that we both could not work in the same hospital together. (Let me assure you that I do not feel this way.)

My next course of action I took was to present the case to you Sir, for your evaluation and judgment. However, I am still awaiting your reply which you mentioned would come either by the end of the week of the 10th, Dec. or the following week. As of today, I have had no word of this by either

you, Sir, or from Mrs. Leonard regarding an ultimate decision.

Sir, may I please be allowed to request again for your decision in writing, regarding this issue, since I find it most inappropriate to accept a decision of this nature from a physician, since the hiring and firing of nursing personnel does not come under his jurisdiction.

Thanking you for your attention in this matter,

Yours respectfully,
/s/ Lynette G. Rogers
Lynette G. Rogers
R.N. Od. Supervisor

lgr.
cc . Mrs. P. Leonard
Mr. E. Bell

KAISER FOUNDATION HOSPITALS
2425 Geary Blvd., San Francisco,
California 94115 - Phone 567-4400

March 8, 1968

Mrs. Lynette Rogers
624 Cornelia Court
Mountain View, California

Dear Mrs. Rogers:

It is with considerable regret that I must terminate your employment with Kaiser Foundation Hospital. I will be happy to consider an immediate resignation, if you prefer.

Mrs. Rogers, although you have done a creditable job for us, I feel this action is absolutely necessary in view of the fact that you have been obviously unhappy and our interpersonal relationship has deteriorated. Unfortunately, I no longer find it possible to communicate effectively with you,which adversely effects the operation of the entire Nursing Service.

We will pay you two weeks notice rather than working the time.

I sincerely wish you the very best, Mrs. Rogers, in your nursing career and future.

Sincerely yours,
/s/ Patricia Leonard
(Mrs.) Patricia Leonard, R.N.
Director of Nursing

ea
cc: Personnel
Mr. Nesbit

Addendum Z, attach. 40-"b"

624 Cornelia Court
Mountain View, Calif.
4/5/'68

Dear Personnel Manager,

Please obtain an evaluation of my work at Kaiser San Francisco from Miss. L. Erskine, Personnel Manager, Kaiser Foundations Hospitals, 2425 Geary Blvd. San Francisco.

Thank you,
Yours sincerely,
/s/ L. Rogers
(Mrs. Lynette Rogers. R.N.)

Addendum Z, attach. 40-"c"

THE PERMANENTE MEDICAL GROUP
San Francisco Offices
2200 O'Farrell Street
San Francisco, California 94115
WAlnut2-3400

April 3, 1968

Director of Nurses
Veterans Administration Hospital
3801 Junipero Serra Boulevard
Palo Alto, California

Dear Madam:

Mrs. Lynette Rogers has asked me to write you regarding her qualifications.

Mrs. Rogers was supervisor on my obstetrical floor at the Kaiser Foundation Hospital in San Francisco and performed exceptionally well in every capacity. I was constantly impressed with her knowledge regarding each patient and their progress.

She made several changes on my floor to the advantage of all. The residents and staff physicians enjoyed working with Mrs. Rogers.

I have no hesitation in recommending her as an exceptionally fine supervisor.

Sincerely yours,
/s/ H. Bristol Nelson
H. Bristol Nelson, M.D.
Chief
Department of Obstetrics
and Gynecology

HBN/bh

Addendum Z, attach 40-"d"

VETERANS ADMINISTRATION
Hospital
3801 Junipero Serra Blvd.
Palo Alto, California 94304
April 9, 1968
In Reply Refer To: 640(135)

Mrs. Lynette G. Rogers
624 Cornelia Court
Mountain View, CA 94040

Dear Mrs. Rogers:

I am pleased to inform you that you have been selected for a 90-day temporary appointment at this hospital. Your appointment will be effective April 15, 1968, as a Nurse, Full Grade, at $8592 per annum.

This appointment is subject to completion of a satisfactory physical examination and receipt of satisfactory evaluations.

We are looking forward to seeing you at 7:30 a.m. on Monday, April 15, in the Office of the Chief Nurse, B-125.

Sincerely yours,

/s/Carl P. Hollenhorst
CARL P. HOLLENHORST
Chief, Personnel Division

Addendum Z, attach. 41

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts, that:

2. After my 90-day temporary appointment expired, I was informed by Mrs. D. von Morpurgo, RN, Supervisor, that I was being denied employment in the VA.

3. I was informed by my Head Nurse, Gladys Chennette, RN, that the supervisor used two reasons for this action. One, I exercised my right to free-speech, and I spoke as advocate for a veteran from a questionable "therapeutic nursing practice," and two, because Mrs. von Morpurgo, RN, alleged that I was a "troublemaker" in reference to some unknown information in my Official Personnel Folder.

4. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, plaintiff *pro se*

624 Cornelia Court
Mountain View, Ca. 94040
7/2/1963

Mrs. A. June Miller R.N.
Asst. Chief, Nursing Service, Med-Surg.
Veterans Administration Hospital,
Palo Alto, Ca.

Dear Mrs. Miller:

I am sorry that I was not more coherent this afternoon in my plea for reconsideration of the decision handed me by our Supervisor, Mrs. Von Morpurgo, for VAPA not to accept me for a permanent position at the end of the three months probationary period.

As I had stated to both you and Mrs. Von Morpurgo that I was not aware that a problem existed until Friday June 28. Also since I was off on both Sunday and Monday, Miss G. Chenette said that she would arrange a conference between the three RNs and myself when I returned to work so that we could understand and solve the problem. However, now on the basis of both the RNs refusal to discuss the problem with me, and also that my record showed that I did have a problem before, I was denied the privilege of being accepted as a member of VAPA's staff.

I pursued a point of justice (commensurate with the right of a citizen in our democratic society) at San Jose State College. As a result of winning this decision in my favor, I was told by Mrs. P. Leonard Director of Nursing Service at Kaiser Hospital, San Francisco, that I was wrong. Also that I should not work at Kaiser because of this. Mrs. Leonard heard of the problem unofficially by certain unknown parties at San Jose State College. As a result of this, the Vice President of the college wrote me a letter, a copy of which I forwarded to Mrs. Leonard to keep in

my file. Now once more I am feeling the repercussions of this problem.

May I please be allowed to meet with either you or the evaluating committee to discuss this incident, so that I can be exonerated from this stigma and given a chance to work constructively with my colleagues towards patient care.

Thanking you for your attention and consideration in this matter.

Yours respectfully,

/s/Lynette Rogers
(Lynette Rogers. R.N.)

lgr
c.c. L. Rogers

VETERANS ADMINISTRATION HOSPITAL
3801 Miranda Avenue
Palo Alto, California 94304

640/05A
October 1978

GENERAL INFORMATION ON EMPLOYMENT OF REGISTERED NURSES IN THE VETERANS ADMINISTRATION

I. Requirement for appointment:

1. Application Form 10-2850a - 2 completed copies to Personnel Service (original and 1 signed carbon will suffice).
2. Official transcripts will be required (with Registrar's seal) only upon selection.
3. Verification of current license (to be done on interview in Nursing Service). New graduates are appointed as Graduate Technicians at grade and salary for which they qualify, Junior or Associate, and after passing State Board examination receive a 3-year probationary appointment. License from any state accepted by Veterans Administration.
4. Verification of service in Armed Forces if appropriate. (DD 214 is required).
5. Age - no age limit.
6. Citizenship - must be a citizen of the United States except when it is not possible to recruit qualified citizens, non-citizens with immigrant visa may be employed on a temporary basis provided they meet all other requirements for the grade or position concerned. Positions cannot be committed to non-citizens not legally entitled to reside in this country nor can requests be made for entry or extension of stay of non-citizens other than under an authorized Addendum Z, attach. 44 exchange-visitor program; non-citizens may be employed for a maximum of

6 years.

7. Personal interview - Nursing Service determines whether or not an applicant is interviewed upon review of the application. If Nursing Service decides that an appropriate vacancy exists, they will contact the appli-cant for an interview.

8. Physical examination - after you have been selected, a physical examination will be done without cost at this hospital. Personnel Service will notify you about an appointment. If you are not in this area, the examination may be done at the nearest VA Hospital and forwarded to us. This examination is mandatory and must be satisfactorily completed before any appointment can be confirmed.

II. Grades and Salaries:

1. Grade and salary are based on evaluation of your over all professional ability, including experience and educational preparation. This evaluation and recommendation regarding appointment are made by the Nurse Professional Standards Board at this hospital.

7. Nursing Service Educational Programs and Activities:

a. Orientation Programs - All newly employed professional nurses, Licensed Vocational Nurses and Nursing Assistants with previous hospital nursing experience and training receive 4 weeks orientation. Formal orientation is planned for each orientee to clinical ward assignment as well as formal conferences, classes and demonstrations. One to three months orientation is necessary depending upon status of new orientee.

b. Staff Development & Inservice Education Programs - There are

continuous inservice and staff development programs available for all levels of skill and clinical practice in providing quality nursing care.

c. Educational Opportunities - De Anza, Foothill, San Jose, Canada and San Mateo Community Colleges offer lower division courses. Colleges of San Mateo, De Anza and San Jose City offer undergraduate courses in nursing. San Jose State University, San Francisco State University and University of California at San Francisco offer nursing programs leading to Bachelor Degrees in Nursing. University of California at san francisco offers a nursing program leading to Doctor of Nursing Science. Standford University offers many educational programs with none available in Nursing. Cintinuing education courses are offered by the University of California Continuing Education dept. as well as local Community Colleges and Universities.

d. Student Nurses from the agencies listed below are assigned for clinical placement nursing experience for all services - Palo Alto and Menlo Park Divisions:

COLLEGE OF SAN MATEO - San Mateo, Ca, 2 year A.A., R.N. Program.

CUBBERLEY ADULT SCHOOL - Palo Alto, CA, Nursing Assistant Program

DE ANZA JUNIOR COLLEGE - Cupertino, CA, 2 year A.A., R.N. Program

SAN JOSE STATE UNIVERSITY - San Jose, CA, B.S.N. Program Observational experience.

SAN JOSE CITY COLLEGE - San Jose, CA, 2 year A.A., R.N. Program

ST. LUKE'S HOSPITAL - San Francisco, CA, Diploma Program

UNIVERSITY OF CALIFORNIA, SAN FRANCISCO, San Francisco, CA, B.S.N. Master and Doctoral Programs

NOTIFICATION OF PERSONNEL ACTION

1. NAME, LAST-FIRST-INITIAL
   ROGERS, LYNETTE G MRS.
2. STATION NO.
   5024
3. BIRTH DATE
   05-19-22
4. SOCIAL SECURITY NO.
   549-62-6833
5. Veteran PREFERENCE
   1 (indicating "no")
6. TENURE GROUP
   0
7. SERVICE COMP. DATE
   04-15-68
8. HANDICAP CODE
   00
9. FEGLI
   2
10. RETIREMENT
    2
11. (For CSC use)
    N/A
12. CODE S.C. NATURE OF ACTION
    761 Ext of Excepted Appt
13. EFF. DATE
    07-13-68
14. N/A (no entry)
15. FROM-POSITION TITLE AND NO.
    Nurse
16. PAY PL. OCCUP. CODE
    AD 0610 /81/
17. GRADE OR LEVEL
    FULL
    STEP RATE
    3
18. SALARY
    PA $8592
19. NAME AND LOCATION OF EMPLOYING OFFICE
    VAH PROF SVCS NURSING SERVICE
    Palo Alto, Calif
20. TO -POSITION TITLE AND NO.
    NURSE
21. PAY PL. OCCUP. CODE
    AD 0610 /81/
22. GRADE OR LEVEL STEP RATE
    FULL 3
23. SALARY
    PA $8592

Addendum Z, attach 45

24. NAME AND LOCATION OF EMPLOYING OFFICE
VAH PROF SVCS NURSING SERVICE
PALO ALTO, CALIF
25. DUTY STATION
PALO ALTO CALIF
26. LOCATION CODE
04-2660-085
27. APPROPRIATION
8241.2130
28. POSITION OCCUPIED
2
29. No Entry
30. No Entry
31-33. No Entry
34. SIGNATURE AND TITLE
/s/ Carl P. Hollenhorst
PERSONNEL OFFICE
35. DATE
07-13-68

MOTION NO. 2
DECLARATION "G"

TO WHOM IT MAY CONCERN

I, LYNETTE ROGERS, declare:

1. I am the plaintiff in Civil Case No. 83-20374 WAI, and I have personal knowledge of the following facts, that:

2. As Head Nurse of Ward 1B5, I was fulfilling the requirements for this position by requesting various members of health-related disciplines to teach nurses, so that they would have the necessary knowledge to provide optimum nursing care to veterans. My record of "PROGRESS AND DEVELOPMENT" shows that this teaching was an on-going process. [Attach. "a"].

3. In addition, I also requested the professional team nurse leaders to assist the nursing assistants so that they could contribute to the composite nursing care plan for veteran patients. [Attach. "b"].

4. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on July 11, 1992, in Mountain View, California.

/s/ Lynette Rogers
Lynette Rogers, plaintiff *pro se*

This sheet contains the verbatim text from four handwritten notes.

Kathy:
Can you please look these over to see how you can help those who need it. Attent: to V. Larson.
Thank you
LR
5/17/71

Clara:
These are the NAs you ??? for. As you can see the diff. between the NAs for their assignments.
Can you please help those who need it please?
Its good to see you had 2 team conf.
Thank you.
LR

Donna:
Can you please help David with his assignment and also help him to transmit info to chart & Kardex
Thank you
LR

Angie:
Can you look these over please to see how you can help those that need it?
Thank you
LR

5/17/71

Addendum Z, attach. 46-"a"

RECORD OF PROGRESS & DEVELOPMENT ON WARD 1B5, FEB-DEC, '71 PART 3

PROJECT 1: Inservices (other than by Nurs. education)

PLANNING STAGE: continuous

IMPLEMENTING STAGE: continuous

ACCOMPLISHED 19 (clinical Pharm. Physicians & Diet.)

PROJECT 2: Nurse consultants (other than by Nurs. Ed.)

PLANNING STAGE: continuous

IMPLEMENTING STAGE: continuous

ACCOMPLISHED 5:
1. 4/20 A. Huntsman
2. 5/3 D. Tippler
3. M. Riley
4. P. Lynch
5. e. Culver

PROJECT 3: Group Ward conference with HN only

PLANNING STAGE: continuous

IMPLEMENTING STAGE: continuous

ACCOMPLISHED 11

PROJECT 4: Non-professional nursing duties

PLANNING STAGE: 5 months

IMPLEMENTING STAGE: continuous

ACCOMPLISHED 7/7/71

PROJECT 5: Revision of team duties for non-profess.

PLANNING STAGE: current

IMPLEMENTING STAGE: continuous

ACCOMPLISHED -

Addendum Z, attach. 9-"i"

PROJECT 6: RN duties (group not ready)
PLANNING
STAGE: -
IMPLEMENTING
STAGE: -
ACCOMPLISHED -

PROJECT 7: Team approach to Nursing
PLANNING
STAGE: approx. 4 months
IMPLEMENTING
STAGE: (group not ready)
ACCOMPLISHED 1 meeting with staff dev. coord.

PROJECT 8: LVN duties at night
PLANNING
STAGE: current
IMPLEMENTING
STAGE: -
ACCOMPLISHED -

PROJECT 9: revision of I&O sheet
PLANNING
STAGE: current
IMPLEMENTING
STAGE: -
ACCOMPLISHED -

PROJECT 10: Head Nurse objectives
PLANNING
STAGE: very long since group not cohesive yet
IMPLEMENTING
STAGE: -
ACCOMPLISHED -

PROJECT 11: Discharge interview
PLANNING
STAGE: continuous
IMPLEMENTING
STAGE: continuous
ACCOMPLISHED 141 completed
81 not completed
per documented.

(Layout differs because of page limitations. All information is same.)

Addendum Z, attach. 46-"b"